

# ENFORCEMENT POLICY PUBLIC RIGHTS OF WAY

Public Rights of Way and Access Group  
Hampshire Countryside Service

2020

***“Our duty is to protect and assert the rights  
of the public to use and enjoy the Public  
Rights of Way network.”***

## **Equality and Diversity Statement**

Hampshire County Council (the County Council) is committed to the principles of equality and diversity as well as the elimination of discriminatory practices. These principles are embodied in the equality duty of the Equality Act 2010. The equality duty has three aims. It requires public bodies to have due regard to the need to:

- **eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act;
- **advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
- **foster good relations** between people who share a protected characteristic and people who do not share it.

These aims apply to the treatment of all individuals whether members of the public, PROW officers, other HCC staff or volunteers.

This document together with any supporting procedures should be implemented in a non-discriminatory manner. Members of the Countryside Access Group administering the policy are responsible for ensuring that in its application, those to whom the policy applies shall not receive less favourable treatment because of their age, colour, disability, ethnic or national origin, gender re-assignment, marital status, nationality, race, religion, sex or sexual orientation.

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## **Public Rights of Way - Definition**

There are four categories of Public Rights of Way:

1. Public Footpaths – where the public has a right of way on foot only\*
2. Public Bridleways – where the public has a right of way on foot, on horseback, leading a horse, and on a bicycle.
3. Restricted Byways – where the public has a right of way on foot, on horseback, leading a horse, by bicycle and by riders of non-mechanically propelled vehicles (such as horse drawn vehicles).
4. Byway Open to All Traffic (BOAT) – where the public has a right of way on foot, on horseback, leading a horse, on a bicycle, in a motorised vehicle or non-motorised vehicle and driving animals.

As public highways, Public Rights of Way enjoy the same protection provided by the Highways Act 1980 as “proper roads”. They also enjoy additional protection provided by other legislation namely the National Parks and Access to the Countryside Act 1949, Countryside Act 1968, Wildlife and Countryside Act 1981 and Countryside and Rights of Way Act 2000.

\* ‘on foot’ includes the use of a pram, pushchair or wheelchair, or mobility vehicle where possible

# HAMPSHIRE COUNTY COUNCIL

## PUBLIC RIGHTS OF WAY ENFORCEMENT POLICY

There are over 4,500km (2,800 miles) of Public Rights of Way within Hampshire made up of Public Footpaths, Public Bridleways, Restricted Byways and Byways Open to All Traffic. There is a statutory duty imposed under Section 130 of the Highways Act 1980 for the County Council to:

*“assert and protect the rights of the public to the use and enjoyment of”, “prevent, as far as possible, the stopping up or obstruction of”, and “prevent any unlawful encroachment on”* all these public rights of way.

The Public Rights of Way Officers (Countryside Service, Countryside Access Group) carry out the duty to enforce the provisions within current legislation in respect of public rights of way on behalf of the County Council.

The overarching duty is to safeguard the right of the public to the use and enjoyment of the public rights of way network:

- For recreational purposes, benefiting the health and well-being of the public and of value to the tourist industry in Hampshire; being an important element in the support of many small local businesses.
- For utilitarian purposes, important in allowing people to go about their everyday business.

When issues occur that require legal action, the County Council will use advice, persuasion, direct action and/or prosecution proceedings to resolve them. This policy aims to ensure that the County Council acts in a fair, reasonable and proportionate manner, to ensure that duty under s.130 is achieved. Our intention is to ensure that advice and persuasion are the methods used in the vast majority of cases.

To reduce the need to resort to enforcement action, the County Council is committed to raising awareness and understanding of responsibilities, liabilities and duties and, where appropriate, will offer advice and guidance to help landowners and occupiers to comply with the law.

This document explains relevant concepts and background and concludes with a formal statement of the County Council’s Policy.

Enforcement action is the general term used in this document to cover the range of options open to the County Council including negotiation, advice, direct action to remove obstructions and other legal action up to and including prosecution.

**Approved by Executive Member on ..... 2021**

**HAMPSHIRE COUNTY COUNCIL**  
**PUBLIC RIGHTS OF WAY ENFORCEMENT**  
**POLICY STATEMENT**

**POLICY EP1**

Wherever obstructions or other breaches of relevant legislation are identified or notified, Hampshire County Council will utilise its various powers and where necessary its enforcement powers, to remedy the problem.

**POLICY EP2**

In dealing with enforcement cases, priority will normally be given to cases where it is considered by the County Council that one or more of the following criteria are met:

- 1) The obstruction provides an unacceptable health and safety risk;
- 2) The resolution of the obstruction will result in a significantly enhanced Public Rights of Way network.
- 3) The obstruction adversely affects a promoted route or strategically important path;
- 4) A significant number of valid complaints have been received about the obstruction from a variety of independent sources.

**POLICY EP3**

In pursuing an enforcement case, the County Council will follow a fair and reasonable process to try to remove the obstruction(s), with the aim of resolving the problem at the earliest possible stage. The following sequence of steps will normally be adopted:

- i advice
- ii written warning
- iii enforcement notice / direct action
- iv legal caution
- v prosecution

## **Scope of the Policy**

Enforcement will be considered wherever appropriate statutory powers exist to deal with actions or inactions that may lead to risks to the health and safety of the public or to their rights being infringed, but the County Council will operate within the principles outlined within the Central and Local Government's Enforcement Concordat (see below). The main areas to which this policy applies are listed below (further detail is included within Appendix 1):

- 1) Barbed wire
- 2) Bulls and dangerous animals
- 3) Cross compliance
- 4) Dogs on Public Rights of Way
- 5) Dangerous land adjoining a Public Right of Way
- 6) Electric fences
- 7) Encroachment
- 8) Gates
- 9) Hedges and trees adjacent to Public Rights of Way
- 10) Liability to path users
- 11) Misleading signs and notices on Public Rights of Way
- 12) Obstructions
- 13) Ploughing and crops on Public Rights of Way
- 14) Ropes etc across Public Rights of Way
- 15) Stiles and gates
- 16) Surfaces of Public Rights of Way
- 17) Tree branches and limbs across Public Rights of Way
- 18) Widths of Public Rights of Way

Other nuisances, obstructions and offences will be dealt with in a comparable manner according to the circumstances of the case.

## Principles of Enforcement

The County Council has signed the Central and Local Government's Enforcement Concordat to show its commitment to good enforcement practices. The proportionality principle set out within the Government's Enforcement Concordat will be taken into account when deciding which course of action to pursue: **"The action pursued should be balanced, reasonable and commensurate to the scale of the offence."** This policy requires that enforcement activities should be carried out in a way which is:

- 1 **Transparent** – ensuring that those against whom enforcement action is taken are aware of the legislative requirements and aware of the likely consequences of non-compliance. Distinction will need to be made between statutory requirements and what is good practice or desirable but not compulsory. Transparency should aid those being regulated in complying with statutory requirements and minimise the need for further enforcement action. Where enforcement action is required an explanation (usually in writing) will be given of why that action is necessary and when it must be carried out.
- 2 **Accountable** – having a process for complaints, appeals and feedback – well publicised, effective and timely.
- 3 **Proportionate** – relating the enforcement action to the seriousness of any breach of the law and the potential risks or impact on the public. Some incidents have the potential to place the public's health and safety at risk, others interfere with people's enjoyment and rights and the County Council's ability to carry out its activities. Enforcement action will be proportionate to the risks posed and to the seriousness of any breach.
- 4 **Consistent** – fair and impartial, taking a similar approach in similar circumstances, whilst exercising a level of judgment and professional discretion in individual cases. Taking all relevant factors into account, such as the seriousness of the breach, the impact or potential impact on the public, the attitude of those responsible for the breach and the history of previous breaches.
- 5 **Targeted** – ensuring that enforcement action is directed primarily to where the risks or impact on the public is greatest. Action will be focused on those directly responsible for the breach and who are best placed to control it. Prioritisation will be based on a number of factors including assessment of risk, impact on the public and complaints from the public.

## Courses of Action

There are several possible courses of action available depending upon the nature of the offence.

- 1 **Advice** – Advice may be given when it is considered that the infringement is of a minor nature, and the County Council is confident the owner or occupier involved will take the required corrective action. The owner or occupier will be requested to take appropriate remedial action within a given time period depending upon the circumstances of the case.
- 2 **Written Warning** – Given by the County Council, this may be appropriate for trivial matters, first offences and reminders where prosecution could result in adverse publicity or prove not to be an effective use of officer time.
- 3 **Enforcement Notices & Direct Action** – A formal notice may be served if an offence has been committed and where a request to take remedial action has failed. Such notice may include provision for the County Council to take direct action to remove obstructions or nuisances or to deal with the appropriate restoration of paths and to recover its costs.
- 4 **Prosecution** – In some circumstances the County Council will prosecute if it believes it to be in the public interest to do so. Certain offences require the service of a Notice before an application can be made to the Magistrates' Court for an order to remedy the problem.

Whilst the County Council would normally commence enforcement action by giving *Advice*, and only escalate to a more severe course of action if that was unsuccessful, it will reserve the right to issue an *Enforcement Notice* or instigate *prosecution proceedings* immediately where it is appropriate to do so. This may be considered justified if the breach was particularly serious or the offender had a history of similar offences.

Prosecutions will normally be a last resort but remain an important part of the enforcement process. In cases where there is sufficient evidence, the County Council will prosecute suspected offenders if there are grounds for believing that the offence is likely to be continued or repeated and where it is appropriate to deter others.

Each case will be considered on its own merits, taking into account all the circumstances and in accordance with the Code of Practice for the Crown Prosecution Service.

Prosecution may be considered appropriate where there is sufficient evidence and prosecution is in the public interest. Prosecution may be appropriate where one or more of the following applies:

- There is a significant risk to public safety.
- There is a flagrant breach of the law, or if notice had been given that legal proceedings will be considered for future breaches.
- There has been a failure to heed advice or instructions or take corrective action.
- There is a history of infringements by the defendant.
- A conviction is likely to result in a significant fine or other penalty.
- The Offence is widespread within the County Council area.

Each case will be subjected to an ongoing process of review to ensure the level of enforcement action continues to be appropriate. Once the County Council decides to prosecute, it will proceed without undue delay.

### **REFERRAL TO THE RURAL PAYMENTS AGENCY**

There are several current cross compliance rules farmers and land managers must follow if they are claiming payments from the Rural Payments Agency to ensure Public Rights of Way (PROW) passing over land in their ownership or control are kept open and unobstructed to their full width. This requirement further reinforces existing legislation. Future compliance regulations are yet to be adopted

Where reports of obstruction/nuisance have been investigated and substantiated by officers and evidence has been gathered (photographic) which results in Notice being served then the offence should be reported to the Rural Payments Agency or any future over-seeing government body.

## Prioritising Enforcement Work

There are a significant number of unresolved obstructions to the Public Rights of Way network. Whilst only a small number seriously impact on the public's enjoyment of the network, it is important that all these issues are addressed so that users and landowners/occupiers have certainty about the extent of the public's rights. As a consequence, it is necessary that a system of prioritising the enforcement work is in place.

In some cases, as time passes it may become progressively more difficult to secure the removal of an obstruction. Officers retain discretion to deal with "new" obstructions immediately, regardless of the below prioritisation, where it is considered an effective use of resources. This applies to all seasonal obstructions.

<b>1 - Priority Obstructions</b>	Obstructions where one or more of the criteria set out in Policy EP2 are met. These obstructions will be dealt with as a matter of urgency.
<b>2 - Routine Obstructions</b>	Obstructions which do not meet the criteria set out in Policy EP2 but which nonetheless may have a negative impact on the public trying to use the path.
<b>3 - De Minimis Obstructions</b>	Obstructions which appear negligible in their impact on the public. These will be recorded on file and actioned when resources are available. Resolution of the issue will be sought if an opportunity arises, for instance if the obstructed path is identified on a search in the process of the sale of the surrounding land, or if development is proposed for the affected land. Priority will increase if de-minimus obstructions are part of wider issues

## **Appendix 1 - A Guide to Problems and Protocols**

This is a guide to Hampshire County Council's protocols regarding issues and queries, including enforcement, commonly associated with Public Rights of Way. It will help the understanding of some of the legislation which applies to Public Rights of Way and how the County Council is obliged to apply legislation to the various issues.

The effectiveness of the legislation in protecting the Public Rights of Way network and the rights of the public depends on the compliance of those regulated. The County Council has adopted the Central and Local Government "Concordat on Good Enforcement".

The Public Rights of Way team provide advice and information in relation to Public Rights of Way issues. We are open about how we go about our work. We are keen to discuss general issues or specific problems. We believe that prevention is better than cure and that our role involves actively working with both landowners and users.

We provide a courteous and efficient service, and our staff will identify themselves by name and provide contact details, unless it is not appropriate to do so. In cases where disputes cannot be resolved any right of appeal or complaints procedure will be explained, with details of the process and the likely timescale.

This information is intended as a guide only and is not an exhaustive text on Public Rights of Way legislation and case law. The landowner / land manager is entitled to seek independent legal advice on any aspect covered by this information; it is not intended as a substitute for that advice.

### **Barbed wire**

#### **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 Public Right of Way and a nuisance and a danger to members of the public wishing to use the Public Right of Way.

The County Council will in these matters firstly 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 County Council as it would constitute a new structure (see stiles and gates).

If the owner fails to agree to either of these courses of action, the County Council will consider prosecution for obstruction.

**Highways Act 1980 sections 137 and 149.**

**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 County Council the barbed wire does represent a danger to the public, then the County Council will firstly 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 County Council will serve legal notice requiring the owner to remove the source of danger within a specified time.

**Highways Act 1980 section 164.**

**Bulls and 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 in it.

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, 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. See also Animals Act 1971 section 2.**

**Crops on Public Rights of Way**

Also see Ploughing and crops on Public Rights of Way.

**Cross compliance**

If a landowner/occupier breaches legislation in relation to Public Rights of Way they may also be in breach of the Department for Environment Food and Rural Affairs (DEFRA's) Good Agricultural and Environmental Condition Standards (GAEC's) and Statutory Management Requirements (SMRs). DEFRA requires that these standards are met by landowners/occupiers in order for them to qualify for the Basic Payment Scheme (BPS). If a landowner/occupier fails to comply with an enforcement notice issued by the County Council in relation to Public Rights of Way, details of the offence will be sent to the Rural Payments Agency (RPA) and their BPS may be affected. The County Council will undertake to do

this only as a last resort and every effort will be made to resolve the problem by co-operation first.

### **Dangerous land adjoining a Public Right of Way**

From time to time the County Council encounters unfenced dangers on adjoining land which present hazards to path users. The County Council has a duty to protect path users from such dangers and will in the first instance enter into dialogue with the owner of the adjacent land to urge him to remove or adequately fence the danger. The County Council 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 County Council may carry out the work and recover the costs from the owner.

**Highways Act 1980 section 165.**

### **Dangerous Dogs**

**Also see - Bulls and dangerous animals**

### **Dogs on Public Rights of Way**

Dogs are allowed on Public Rights of Way and are classified as a 'usual accompaniments' 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 a Public Right of Way becomes a trespasser and an owner/occupier has the right to ask them to leave the land. If a dog is likely to wander off the line of the path owners are advised to keep their dog under close control and may require the use of a lead. It is a criminal offence if a person's dog worries livestock on agricultural land. Worries is defined as attacking livestock, chasing livestock in such a way that injury or suffering to livestock is likely to be caused and being at large in a field or enclosure in which there are sheep.

### **Dogs (Protection of Livestock) Act 1953**

### **Dogs on Land with a Right of Way crossing it**

Landowners can keep dogs on land with rights of way crossing it. If a dog acts in such a way that it either prevents a person using the route or frightens users this constitutes a public nuisance at common law and may be seen as an obstruction. The effect of dogs being on the right of way or adjacent to the right of way has on a user will depend on the user and the type of right of way e.g. A horse rider on a public bridleway is likely to be more affected by a dog barking and growling alongside a public right of way than a walker on a footpath.

It is an offence to have a dangerous dog or a dog dangerously out of control in a public area – public areas include public rights of way.

The County Council's protocol in these situations is to report any incident or near incident to the police who can assess the incident and take the necessary measures.

## **Highways Act 1980 section 137 and Dangerous Dogs Act 1991**

### **Electric fences**

#### **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 Public Right of Way and a nuisance and a danger to members of the public wishing to use the Public Right of Way. The protocol the County Council has adopted in these matters is firstly to ask 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 County Council as it would constitute a new structure (see stiles and gates). If the owner fails to agree to either of these courses of action the County Council will serve legal notice requiring the owner to remove the source of danger within a specified time. If the owner continues to commit further offences of this nature the County Council will consider prosecution for obstruction.

#### **Highways Act 1980 section 137, 137Z, and 149.**

#### **Electric fences alongside a Public Right of Way**

Where an electric fence runs 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 County Council this is the case then the County Council has a protocol of firstly asking 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 County Council will serve legal notice requiring the owner to remove the source of danger within a specified time. Failure to comply with the notice may result in the County Council removing the fence and recovering costs from the owner.

#### **Highways Act 1980 section 165.**

### **Encroachment**

An encroachment is an unlawful obstruction of the highway. When an encroachment has occurred or alleged to have occurred, the County Council is duty bound to investigate and the following action will be taken.

Consideration will be given to whether the encroachment has 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 width of Public Rights of Way). If it is demonstrated to the County Council's satisfaction that encroachment has occurred, but it is not materially affecting the path or the rights of users, the County Council may regard it as de minimis "the law is not concerned with trifles". In these circumstances the County Council 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 County Council's satisfaction to be materially affecting the Public 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 timescale to be determined by the County Council. If this fails to secure the removal of the encroachment, the Council will commence enforcement action in respect of the obstruction (see Obstructions).

### **Hedges and trees adjacent to Public Rights of Way**

In most circumstances the responsibilities of the County Council do not extend to the maintenance of hedges and trees at the side of Public Rights of Way. Where a hedge overhangs or obstructs a Public Right of Way, the County Council has a right to remove so much of the overgrowth to prevent the obstruction to users.

Where a hedge or trees overhang or obstruct a Public Right of Way, from adjacent land or hedges forming the boundary of land, the landowner is responsible for the removal of the vegetation from the legal width of the highway, to allow legal passage. The County Council has the power to require the owners of overhanging hedges and trees to 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 County Council has a power to seek an order at a Magistrates' Court to require the owner to cut back sufficient of it to prevent such damage. However, before employing this power, the County Council will discuss the matter with adjacent landowners and request 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 1980 section 136.**

Also see Tree branches and limbs across Public Rights of Way.

## **Liability to path users**

### **Landowners:**

Owners and occupiers of land crossed by Public Rights of Way can be liable for injuries caused to path users by the negligence of the owner or occupier. 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.**

## **Misleading signs and notices erected on Public Rights of Way**

Misleading and unlawful signs can deter people from lawfully exercising their right to use paths and the County Council has a duty to prevent such occurrences. Signs erected on a Public Right of Way can be removed by the County Council. 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.

**Highways Act 1980 section 132. National Parks and Access to the Countryside Act 1949 section 57.**

## **Obstructions**

### **Obstructions and encroachments which can be readily removed:**

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

Hampshire County Council has a protocol of dealing with obstructions firstly by consultation and dialogue, requesting the offender to remove the obstruction. Depending on circumstances, offenders are normally given 28 days to comply. This informal notice will be confirmed in writing. If after that period the offender has failed to comply, formal legal notice is served requiring the offender to remove the obstruction within a specified time. Upon expiry of that time the County Council will remove the obstruction and recover costs from the landowner.

The County Council has a protocol of considering prosecution for obstruction for any subsequent offence as well as taking the direct action outlined above.

**Highways Act 1980 section 143.**



### **Obstructions which are longstanding:**

Longstanding obstructions of Public Rights of Way are regularly encountered. The obstructions have often occurred through a lack of understanding by the landowner and/or issues relating to the planning process. Indeed, many such obstructions are historical and have been inherited by the current owners.

In these circumstances the County Council will deal with the problem in the following manner:

- Where the obstruction is minor it must be removed by the owner. If the owner fails to remove the obstruction within a period of time deemed reasonable by County Council officers, enforcement action using powers available under section 143 of the Highways Act 1980 will be taken and the obstruction removed. The costs of the enforcement action will usually be recouped from the offender.
- If the offence recurs prosecution of the offender will also be considered. The County Council will only consider a request to divert the path following the removal of the obstruction.
- Where the obstruction is substantial and it would be costly and impractical to remove it, the owner will be requested to apply for the diversion of the path rather than remove the obstruction. The County Council will expect the owner to make an alternative route available whilst the diversion process is completed.
- If the owner fails to acknowledge the problem or does not co-operate with the County Council to remedy it either by diverting the path or removing the obstruction, then this failure should be given considerable weight. In these circumstances' consideration should be given to prosecution and seeking a Magistrate's order to remove the obstruction.
- If an application to divert the path fails, then the County Council would expect the original route to be made available by the owner. If the owner fails to do this then the County Council would consider prosecution and seek a Magistrate's order to remove the obstruction.

### **Obstructions which are more recent:**

Obstructions which can be readily removed will be dealt with by taking direct and immediate enforcement action using powers available under section 143 of the Highways Act 1980 and the obstruction removed. The costs of the enforcement action will usually be recouped from the offender and consideration will be given to prosecution.

Where the obstruction is more substantial, and it is costly and less practical to remove it then consideration will be given to prosecution and seeking a Magistrate's order to remove the obstruction.

**Highways Act 1980 section 137 and 137A.**

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## **Ploughing and crops on Public Rights of Way**

### **Ploughing:**

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 Public Footpaths and Public Bridleways. All field edge Public Rights of Way and cross-field Restricted Byways and Byways Open to All Traffic (BOATS) should never be ploughed.

Where a cross-field Public Footpath or Public 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 Public Footpaths, the minimum width is 1m for cross-field and 1.5m for field-edge. Field-edge paths must never be ploughed. For Public Bridleways the minimum width is 2m for cross-field and 3m for field-edge. Field-edge bridleways must never be ploughed. 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.

### **Highways Act 1980 section 134.**

### **Crops:**

Where a crop (other than grass) has been planted or sown on the 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 clear and walkable width (1m for cross-field and 1.5m for field-edge . For Public Bridleways the minimum width is 2m for cross-field and 3m for field-edge.) 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.

A non-cereal grass crop (such as grasses used for pasture, silage or haymaking) are not covered under section 137A but if they grow in such a way that they cause an obstruction this becomes an offence under section 137. In the first instance the County Council will negotiate with the landowner/occupier to ask them to remove the section of grass that is causing an obstruction. Failure to adhere to this request will result in the standard procedures for obstructions being followed. See above

### **Highways Act 1980 sections 134, 137 and 137A.**

## **Enforcement of ploughing and cropping protocol:**

Interference of Public Rights of Way by ploughing and cropping is a major problem and the County Council has adopted the following protocol to deal with it.



For a first offence, the County Council will explain the law to the offender usually in writing, but can be verbal communication, requesting that the crop be removed from the width. If the crop is not removed this will be followed up with a written request giving 14 days to remove the crop. Following this period, if the path has not been reinstated to a satisfactory standard the County Council will serve formal legal notice upon the offender requiring them to reinstate the path within a further 14 days. If the path is still not reinstated satisfactorily the County Council will carry out the necessary work with contractors and recover costs from the offender. As a follow on to this initial action a letter will be sent to the offender advising them of the offence and informing them that in subsequent years, notice will be served immediately if the offence reoccurs.

Where notice has been served then the offence should be reported to the Rural Payments Agency.

**Highways Act 1980 section 134 Highways Act 1980 for ploughing matters, 137A for interference by crops**

## **Ropes etc across Public Rights of Way**

Where a rope has been placed across a Public Right of Way, the rope will be removed by officers and the owner contacted. If removal of the rope will cause livestock to stray, rather than remove the rope immediately, the landowner will be contacted and asked to remove the rope. Failure to comply with the request to remove the rope or if the offence reoccurs following the removal of the rope and contact by officers the County Council will consider prosecution of the offender. The County Council will also remove the rope if encountered by officers on subsequent occasions.

**Highways Act 1980 section 162.**

## **Stiles and gates**

It is the duty of the landowner to ensure that any stiles and gates are kept in a good state of repair. The County Council's duty only extends to ensuring that the landowner complies with this obligation and to providing a grant of 25% towards repairing such structures.

### **Highways Act 1980 section 146.**

If an occupier of land wishes to install additional gates on Public Footpaths or Public Bridleways they must apply in writing to the County Council for authority to do so. To erect stiles or gates without authority is an unlawful obstruction and is a criminal offence (see obstructions). The only circumstance for which the County Council can provide authorisation for the erection of a new gate is that the structure is required to prevent the ingress or egress of animals onto agricultural land or under section 115E of the Highways Act 1980

### **Highways Act 1980 section 147.**

## **Surfaces of Public Rights of Way**

**“Ownership” of the surface:** Hampshire County Council is the Highway Authority and as such, ordinarily\*, the surface of any Public Right of Way is “vested” in the County Council. Effectively, the County Council owns the surface in most cases. (\*See below Enclosure of a Public Right of Way).

**“Disturbance” of the surface:** The majority of Public Rights of Way do not have a bound or metalled surface and as such can be susceptible to damage.

It is an offence to interfere with the surface of a Public Right of Way to the detriment of users. This means that a landowner/occupier may not dig up or even re-surface a Public Right of Way without the prior authorisation of the County Council. Landowners/occupiers must ensure that their private use of the route; for example in motorised vehicles, does not damage the surface of the path. If damage is caused it must be re-instated by the landowner/occupier. (See also Ploughing)

**How the County Council will deal with this offence:** For a first offence the County Council will explain the law to the offender and advise about re-instatement of the surface. The offender will then be given an appropriate period\* to re-instate the surface to the satisfaction of the County Council. \*The period given will be at the discretion of the Officer concerned and will be dependent on the level of damage and the works required. If there is a danger to the public immediate re-instatement will be required.

If the offender fails to re-instate the path or if the re-instatement is unsatisfactory a notice will be served giving a reasonable period for the surface to be properly

reinstated. Failure to comply with the notice will result in the County Council's contractors carrying out the works with the costs being recouped from the offender.

If the offence recurs the County Council will immediately serve a formal notice requiring re-instatement, it will also consider prosecuting the offender.

**Enclosure of a Public Right of Way:** Where a Public Right of Way crosses previously unenclosed land and the landowner/occupier encloses his land e.g. by erecting a fence or planting a hedge alongside the path, he then becomes responsible for the maintenance of the surface of the route. This liability relates to the section of route which as a result of long usage, a right to deviate has become established

If a path is enclosed in this way, particularly if the path is made very narrow, there can be problems with the surface falling into disrepair very quickly. If the surface does fall into disrepair the landowner/occupier will be required to make it good for example, by providing a better surface, carrying out drainage works or by increasing the width available.

#### **Tree branches and limbs across Public Rights of Way**

If a branch of a tree has fallen across a Public Right of Way such that the way is obstructed the County Council has adopted the following protocol. It will contact the owner of the tree and request that the branch is removed within a predetermined time. If the owner fails to comply with this request the County Council will serve notice on the owner, of its intention to remove the branch and recover from the owner / person the costs, it has incurred.

#### **Highways Act 1980 section 150 (4) (c).**

#### **Widths 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 an historical document or it may be determined by reference to the width between boundaries, such as hedges or fences.

Alternatively, the width may be that which the public have customarily enjoyed. In the absence of the foregoing the County Council will require a reasonable width to be made available which would be sufficient for two users to pass.

In the case of a Public Footpath, this can be regarded as 2 metres; in the case of a Public Bridleway 3 metres; and in the case of a Restricted Byway or Byway Open to All Traffic, 3 metres (Due to the nature of the physical and natural environment in some cases this width may not be readily available).

An encroachment into the width of a Public Right of Way is an obstruction and a criminal offence and the County Council will deal with encroachments according to protocols (see also Encroachment, Obstruction and Enforcement).

Statutory default minimum widths apply to all Public Rights of Way but only in relation to ploughing and reinstatement following ploughing. These are as follows (see also Ploughing and crops).

Minimum Widths of Public Rights of Way (Ploughing)		
	Field edge	Cross field
Public Footpath	1.5m	1m
Public Bridleway	3m	2m
Restricted Byway	3m	3m
Byway Open to All Traffic	3m	3m

**Highways Act 1980** *Schedule 12A*

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