

North Yorkshire Local Access Forum

12 July 2017

Local Highway Authority and Landowner Responsibilities in Relation to Public Rights of Way

Report of the Assistant Director – Waste and Countryside Services

1.0 Purpose of Report

To provide an outline of the respective responsibilities of the Local Highway Authority and Landowners in relation to Public Rights of Way as a context for Member discussion.

2.0 Background

The Local Access Forum meeting on 2 March 2017 resolved that a report clarifying the different County Council and landowner responsibilities in relation to Public Rights of Way be brought to a future meeting for discussion.

The responsibilities for the County Council, as Highway Authority, and landowners are summarised under sections 3 and 4, respectively. This report includes links to Government publications for further detailed explanations, where appropriate.

3.0 Local highway authority responsibilities

3.1 Recording routes and locations

Highway authorities must keep a record of public rights of way and make sure they are open for public use.

The legal record of a highway authority's rights of way network is known as the 'definitive map and statement'.

[Rights of way circular \(1/09\)](#) explains the highway authority's statutory duty to record, manage and maintain, protect and change public rights of way.

The [guide to definitive maps and changes to public rights of way](#) has more detail about the legal duty to record public rights of way.

3.2 Maintaining and protecting public rights of way

Highway authorities must:

- keep the surface of public rights of way which are maintained at public expense in a fit state for public use
- make sure obstructions are removed

- maintain some bridges over natural watercourses, including farm ditches
- provide at least a 25% contribution to landowners' costs for replacing and maintaining structures for the control of animals, e.g. gates or stiles, on completion of the work to a standard the highway authority is satisfied with
- make sure there are no notices that prevent or discourage the use of a public right of way
- add signs where a public right of way leaves metalled roads
- waymark those rights of way where, in the authority's opinion, it is necessary to help anyone unfamiliar with the locality to follow the route (see [Waymarking public rights of way](#))
- make sure the public's rights to use a public right of way are protected
- make sure landowners carry out their duties, and take action if they don't

3.3 Rights of way improvement plans

Highway authorities have a duty to have a rights of way improvement plan which must be reviewed every 10 years. Further information can be found by reading the [guidance on rights of way improvement plans](#).

3.4 Protecting wildlife and habitats

While carrying out maintenance or improvements, highway authorities must have regard for the conservation of biodiversity.

3.5 Access and equality for disabled users

Highway authorities must consider the needs of people with mobility problems and other disabilities.

There are no mandatory requirements for how to approve structures on a public right of way, but must comply with the [Equality Act 2010](#).

3.5.1 Improvements

Highway authorities should make improvements to public rights of way so they are accessible to all users, e.g. stiles should be replaced with gaps or gates, wherever possible.

Before making improvements highway authorities should consider the:

- historical character of existing structures and the landscape
- needs of other users, e.g. parents with children in pushchairs
- accessibility of the route as a whole
- needs of the landowner - highway authorities should negotiate with the landowner to make improvements to existing structures

3.5.2 New structures

When creating a new public right of way or diverting an existing one highway authorities should:

- keep the number of structures to a minimum - there must be a reason for each one
- use the most accessible type of structure available, e.g. a gap or gate rather than a stile
- detail each type (standard and design) of structure clearly in the legal documentation.

Highway authorities must record any new structures on the definitive map and statement.

4.0 Landowner responsibilities

4.1 Understand what public rights of way exist on their land

Owners or occupiers of land must find out if there are any public rights of way across it as determined by the 'definitive map'.

4.2 Keep public rights of way clear of obstructions

Owners or occupiers of land with a public right of way across it must:

- avoid putting obstructions on or across the route, such as permanent or temporary fences, walls, hedgerows, padlocked gates or barbed wire
- make sure vegetation does not encroach onto the route from the sides or above, bearing in mind the different clearances needed for users of different types of route, for example by horse riders
- not disturb the surface of byways, restricted byways and unsurfaced public roads, e.g. by cultivating.

Obstructing a public right of way is a criminal offence. The highway authority has the right to demand the owner or occupier remove any obstruction. If this is not done, the highway authority can remove the obstruction and recover the cost from the owner or occupier of the land.

4.3 Field-edge and cross-field public rights of way

Owners or occupiers of land must not cultivate (e.g. plough) footpaths or bridleways that follow a field edge. The minimum undisturbed width is:

- 1.5 metres for a field edge footpath
- 3 metres for a field edge bridleway

Owners or occupiers of land should avoid cultivating a cross-field footpath or bridleway. If this is unavoidable, then owners or occupiers of land have to make sure the footpath or bridleway:

- remains apparent on the ground to at least the minimum width of 1 metre for a footpath or 2 metres for a bridleway, and is not obstructed by crops

- is restored to at least the minimum width so that it's reasonably convenient to use within:
 - 14 days of first being cultivated for that crop
 - 24 hours of any subsequent cultivation, unless a longer period has been agreed in advance in writing by the highway authority

4.4 Waymarking and warning signs

If official waymarking leaves it unclear where a public right of way goes, owners or occupiers of land may add informal waymarks to remedy this so long as these are not misleading.

Owners or occupiers of land must indicate the route of a reinstated cross-field footpath or bridleway.

If necessary, owners or occupiers of land may use signs to warn users of any dangers that are not obvious, such as slurry lagoons. Note that erecting misleading signs (such as signs about absent bulls) is an offence and highway authorities have powers to remove them.

4.5 Structures for access

Where a stile or gate on a public right of way is the responsibility of owners or occupiers of land, they must maintain it so it is safe and reasonably easy to use.

Owners or occupiers of land can claim a minimum of 25% of the cost of any replacement work from the highway authority.

Where a stile needs replacing, owners or occupiers of land should always consider with the highway authority whether to do this with a gate or preferably a gap, so that it will be less of an impediment to people with mobility problems.

Owners or occupiers of land must seek the highway authority's permission before installing any new structure on a public right of way. Unauthorised structures are obstructions and may be removed by the highway authority at the landowner's expense.

If an owner or occupier of land adds new ditches or widens existing ones (having secured any necessary permissions, including from the highway authority) they must provide adequate bridges for public rights of way users.

4.6 Cross Compliance requirements

'Cross compliance' is a set of rules which tells applicants what they must (and must not) do to receive rural payments for:

- the Basic Payment Scheme
- Countryside Stewardship
- Entry Level Stewardship (including Organic Entry Level Stewardship and Uplands Entry Level Stewardship)

- Higher Level Stewardship (including Organic Higher Level Stewardship and Uplands Higher Level Stewardship, but not including HLS agreements that started before 1 January 2007)
- Woodland Management Grant and Farm Woodland Premium elements of English Woodland Grant Scheme.

Cross compliance is made up of 'Statutory Management Requirements' (SMRs) and 'Good Agricultural and Environmental Conditions' (GAECs). They are about:

- public, animal and plant health
- environment, climate change and good agricultural condition of land
- animal welfare.

GAEC 7b relates to Public Rights of Way, which notes that public rights of way (public footpaths, bridleways, restricted byways and byways open to all traffic) must be kept open and accessible because they are important landscape features.

The applicant must meet the following four requirements:

They must:

- not obstruct public rights of way
- make good the surface of cross field footpaths and bridleways to not less than the minimum width within 14 days of the first disturbance if you are sowing a crop, or within 24 hours in all other circumstances. Minimum widths are 1 metre for footpaths and 2 metres for bridleways
- maintain stiles, gates and similar structures in a condition that makes them safe and reasonably easy to use
- indicate the route of a reinstated cross-field footpath or bridleway so that it's visible on the ground and is at least the minimum width of the recorded route.

These rules apply to visible public rights of way only. This includes any rights of way which would be visible if it wasn't for breaches of the rules.

Further reading: [The guide to cross compliance in England 2015](#)

4.7 Livestock on land crossed by a public right of way: banned animals

Bulls of recognised dairy breeds (Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry) that are over the age of 10 months are banned by law from fields containing a public right of way.

Bulls over 10 months of any other breed must be accompanied by cows or heifers when in fields with public access.

Owners or occupiers of land must make sure that any warning notices relating to a bull are displayed only when it is actually present in a field.

Horses may be kept loose in fields crossed by public rights of way, as long as they are not known to be dangerous.

Owners or occupiers of land can be prosecuted if they keep any potentially dangerous animal on land crossed by a public right of way.

4.8 Spraying on land crossed by a public right of way

If owners or occupiers of land have to spray land crossed by a public right of way, they must use pesticides approved for such use and follow the product instructions.

Where a public right of way crosses or runs alongside a field, they can provide an informal alternative route for this period, however, this does not close the public right of way. If the public are still using the public right of way, despite warning notices, the owners or occupiers of land must stop spraying temporarily.

4.9 Creating, closing, upgrading, downgrading or re-routing public rights of way

Highway authorities have certain powers to make changes to the public right of way networks in their area, as noted above.

Owners or occupiers of land can agree to create a new public right of way or apply to make an order extinguishing, diverting, upgrading or downgrading a footpath, bridleway or restricted byway in some circumstances. They must only do so by liaising with their local highway authority and gaining relevant authorisation.

4.10 Problems with public rights of way

If an owner or occupier of land experiences a problem with a public right of way they are advised to contact the rights of way section of the highway authority through whose area the route passes.

5.0 Legal Implications

5.1 There are no legal implications as this is an advisory report only.

6.0 Financial Implications

6.1 There are no financial implications as this is an advisory report only.

7.0 Equalities Implications

7.1 There are no equality implications as this is an advisory report only.

<h3>8.0 Recommendation</h3>
8.1 It is recommended that LAF members take note of the content of the report.

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Background Documents: None