

Care for the rights of way network needs little more than enthusiasm, vigilance and some knowledge of the law. This leaflet is intended to help local councillors in that work.

The Ramblers' Association (RA) has long argued that walking public rights of way is the best way to enjoy the countryside. Many others now share that view and recognise the health and social benefits of encouraging walking – the nation's most popular outdoor recreation – on a safe, traffic-free network of paths. There are financial benefits too: if walkers – whether local inhabitants or visitors – are encouraged to walk your local paths, their spending will boost the local economy. The closure of the path network during the foot-and-mouth disease outbreak in 2001 showed just how important access to the countryside is to the rural economy.



The statutory duty to protect these paths rests with the highway authority (the county council or unitary authority) but Parliament has given important rights and powers to local councils concerning rights of way. No other authority can know the local paths as well as a local council can, and the voice of the local council will command the attention of the authority when action is called for.

Parish, town and community councils can play a key role in safeguarding a unique part of our heritage – the network of public footpaths, bridleways and byways (more than 130,000 miles in total) which reach into every corner of England and Wales.

Introduction

Check that all stiles and gates are easy for all members of the public to use, and, by agreement with the landowner, and with the knowledge of the highway authority, repair or replace them where necessary.

6 check stiles and gates

If local efforts are not successful, report the matter to the highway authority and press the authority to take action.

5 see that the highway authority takes action

Try to persuade those responsible for problems such as cropping or barbed wire to deal with the problem and respect the public's right of passage.

4 try to resolve problems

In consultation with the highway authority, carry out basic maintenance work, such as clearance of overgrowth, on their behalf.



3 get basic maintenance work done

Carry out regular inspections (at least twice a year) of all the rights of way in the parish or community, noting any matters which need attention, and following these up as appropriate.

2 make regular inspections

Form a rights of way committee and co-opt local path users to gain the benefit of their knowledge and experience.

1 form a rights of way committee



10 organise walks for the public

Help the public both to enjoy the paths and to appreciate the work you have done to make them a pleasure to walk.

9 publicise the paths

Publish a book or leaflet of local walks and put up a map showing the rights of way in the parish or community.

8 see that rights of way are waymarked, too

Ensure that all rights of way are waymarked along their length, by doing the work or by helping others such as the Ramblers' Association to do so, for example by making contact with owners and occupiers.

7 see that all paths are signposted

Ensure that all rights of way are signposted and waymarked where they leave metalled roads, and carry out maintenance of signposts when needed. If there have been legal changes to the network, try to make sure that a sign or notice of the change remains in place for five years after the Ordnance Survey map showing the change has been published.



Your action list

The Ramblers' Association?

The Association is a registered charity and voluntary organisation founded in 1935. It has over 142,000 individual members. It exists to promote walking, to protect public rights of way, to campaign for access to open country, and to defend the beauty of the countryside.

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paths for people

why not affiliate to the Ramblers' Association?

A number of parish, town and community councils have chosen to affiliate to the Ramblers' Association. By choosing to affiliate to the RA, your council will be entitled to a range of useful benefits, as well as supporting our work on behalf of walkers in Britain, protecting path networks, preserving the beauty of the countryside, and increasing walking opportunities in town and country alike.

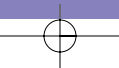
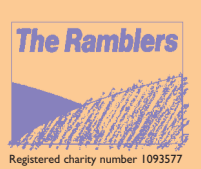
- The benefits of affiliation include:
- the opportunity to purchase Perkins Slade civil liability insurance at a specially negotiated price, available only to affiliates of the RA
 - a subscription to our quarterly magazine **walk**
 - a copy of the RA Yearbook containing useful walking information and a comprehensive guide to accommodation for individuals and groups
 - opportunities to help shape local RA policy

Our affiliation rate is £24, the same as a subscription for standard membership. Affiliation is valid for one year only from the date of joining. Rates correct until September 2005 only. Please telephone our office on **020 7339 8500** for an affiliation form.



The RA is a registered charity (number 1093577), and a company limited by guarantee registered in England and Wales (number 4458492).
www.ramblers.org.uk

a guide to public paths for members of parish, town and community councils



the powers of local councils

Obstructions

An obstruction is a man-made obstacle placed unlawfully on or across a public path. The highway authority has a duty to assert and protect the public's right to use the path and to keep it free from obstruction (Highways Act 1980, section 130). The authority is entitled, after giving due notice, to remove the obstruction and recover its costs from the person responsible.

In many cases it will be possible for a local council to deal with such problems by taking the matter up with the person responsible. However, if this approach fails, a local council has three options. First, it has the same right as any member of the public to prosecute the person responsible for obstructing the public's free passage along the highway (Highways Act 1980 section 137, maximum fine £1,000). Secondly, it could consider utilising a procedure introduced by the Countryside and Rights of Way Act 2000 enabling any person to serve a notice on a highway authority requesting them to secure the removal of an obstruction from a right of way (Highways Act 1980, sections 130A–D). Thirdly, local councils have a special power, provided by Parliament, to invoke the highway authority's duty to keep paths free from obstruction. Section 130 subsection 6, of the Highways Act 1980 states that if a local council complains to a highway authority about an obstructed highway, then the authority is under a duty, unless it is satisfied that the allegations are incorrect, to take 'proper proceedings' to deal with the obstruction.

In 1979, Send Parish Council took Surrey County Council to court over its alleged failure to take 'proper proceedings' in respect of an obstruction, and was granted an order of mandamus requiring the county council to carry out its duty. In judgment, Lord Justice Lane said that whilst the county council had a discretion as to the form of proceedings taken, it 'must at all times act with the object of protecting the highway and of preventing or removing any obstruction, and, more broadly speaking, of promoting the interests of those who enjoy the highway or should be enjoying the right of way; and... must likewise operate against the interests of those who seek to interrupt such enjoyment of the highway'.



To make such a complaint, all that is needed is a suitably detailed letter from the clerk of the council, or the chairman of the parish meeting, to the chief executive of the highway authority. The letter should make it clear that it is a representation under section 130(6) of the Highways Act 1980, and should include the number of the path on the definitive map, the nature and location of the obstruction, and the name and address of the person believed to be responsible for it.

Ploughing and cropping

Under section 134 of the Highways 1980 Act, the occupier of farmland is entitled to plough up or otherwise disturb the surface of a public path which crosses a field if doing so cannot conveniently be avoided. He is then under two duties: to make good the surface so as to make it reasonably convenient for public use, and to make the line of the path apparent on the ground. These duties must normally be carried out within 24 hours of the disturbance, but if it is the first disturbance for the purpose of growing that particular crop, 14 days are allowed. Restoration must be carried out over a width of at least 1m (footpath), or 2m (bridleway). It is an offence not to comply with these provisions; and it is also an offence under section 131A of the 1980 Act to disturb without lawful authority or excuse the surface of any public path or unsurfaced carriageway so as to render inconvenient the exercise of the right of way. It is an offence to plough up a field-edge path. In each case the maximum fine is £1,000.

The occupier of farmland also has a duty, under section 137A of the 1980 Act, to keep the line of a public path apparent through crops. In addition, crops must not be allowed to grow or encroach on any public path or unsurfaced carriageway so that walkers or riders are inconvenienced. 'Crops' includes cereal crops and oilseed rape, but does not include grass grown for pasture, silage or haymaking. The width that must be kept clear is 1m (footpath), 2m (bridleway), 3m (carriageway) across fields, and 1.5m (footpath), 3m (bridleway or carriageway) around the edge of the field. Failure to comply with these duties is an offence, with a maximum fine of £1,000.

While highway authorities have the duty to enforce these provisions, local councils are given the power to undertake prosecutions where an offence is alleged to have been committed under section 131A or 134. This is a most important power which Parliament has entrusted to local councils. It puts them in a strong position when discussing problems of ploughing or other disturbance with a farmer.

Highway authorities also have power to take default action by carrying out the work required and recovering their costs. Although the local council cannot take such action itself, it can greatly assist the highway authority by bringing problems to the authority's notice, and by maintaining an exact record of the date a path was first ploughed or disturbed, so that the authority knows when the time available to the farmer has expired.

Maintenance

This covers cutting back overgrowth, repair of surfaces and upkeep of bridges. It does not include maintenance of stiles or removal of obstructions. If the path is maintainable at public expense (as most paths are), this duty falls to the highway authority. A local council may undertake the maintenance of any public path in the parish or community (Highways Act 1980 sections 43 and 50). The highway authority, or a district council working as its agent, may reimburse the local council. Also a local council is well placed to point out to the highway authority when major maintenance work is needed, for instance on a broken bridge.



Closures and diversions

Most closures and diversions of public paths take place when the highway authority or district council makes an order under section 118 (closures) or 119 (diversions) of the Highways Act 1980. National park authorities and the Broads Authority may also make these orders. County and district councils also have the power to make orders under section 257 of the Town and Country Planning Act 1990 to close or divert public rights of way to enable development, for which planning permission has been granted, to go ahead. Notice has to be placed in the local press, and, with a plan showing the effect of the order, displayed on the path(s) concerned. The notice, and the order itself, must also be served on the local council, and this must be done not less than 28 days before the last date for objections specified in the notice. If there are no objections, the order-making authority may itself confirm the order (but may not amend it); but if there are objections the order and the objections have to be sent to the Planning Inspectorate. The Inspectorate acts on behalf of the Secretary of State for the Environment, Food and Rural Affairs (Defra) and for the National Assembly for Wales, and will appoint an independent Inspector to decide whether or not to confirm the order. The Inspector has power to hold a hearing or public inquiry, and will normally hold an inquiry if a local council has objected.

There is also a power, under section 116 of the Highways Act 1980, under which the highway authority may apply to a magistrates' court for the closure or diversion of any highway (other than a trunk road or motorway). This procedure has to be used for carriageways (eg for byways open to all traffic), but for public paths the authority may use the standard powers in sections 118 and 119 described above. The RA regards those powers as being fairer to the public. The government shares this view, and in a circular in 1993 advised authorities not to use the section 116 power unless there were good reasons for doing so.

Why the concern? The very formal procedure at magistrates' courts is less satisfactory for all concerned than the more informal procedure at public inquiries. It is by no means unusual for people to be afraid to go to court, or, having gone to court, to be afraid to speak. This is partly out of nervousness, and partly out of the very real risk of being involved in substantial legal expenses.

Fortunately, local councils have again been entrusted by Parliament with a special power. An authority wanting to make an application to a magistrates' court under section 116 has to serve notice of its intended application on the local council. The council then has two months in which to decide whether to veto the application. The RA strongly urges local councils to use this power of veto to protect the interests of residents who use the local paths.

Modifying the definitive map

Under the Wildlife and Countryside Act 1981, surveying authorities are under a duty to keep the definitive map under continuous review, and to make orders to amend the map to take account of events requiring the map to be modified (section 53), eg to add rights of way to the map where they are not presently shown there. Local councils have a number of rights in respect of these orders: to be consulted before an order is made; and to be sent a copy of the order and public notice, with not less than 42 days in which to make objection. If a local council objects, the procedures are essentially the same as for an order to close or divert a path. The local council also has the same right as anyone else to apply for a modification order to be made, and a number of local councils have done so successfully. When anyone else makes such an application the local council has to be consulted. The important fact to remember about orders that seek to modify the definitive map is that they are about evidence of rights of way status, not about need; and arguments about whether or not the change which the order proposes are justified are irrelevant. The test which has to be applied is whether or not the evidence justifies modifying the map.



Improvements

Local councils have been given some powers to make improvements to their public rights of way. These include:

- creation of new footpaths or bridleways in their own, or an adjoining, parish or community by agreement with the landowner concerned. The council may carry out, or pay for, any necessary works, but does not appear to have any power to pay compensation to the landowner (Highways Act 1980 section 30);
- insisting that a highway authority puts up signposts at all places where public rights of way leave metalled roads (Countryside Act 1968 section 27(3));
- carrying out, with the consent of the highway authority, signposting and waymarking of public rights of way (Countryside Act 1968 section 27(3)). Waymarking involves painting arrows or fixing metal or plastic signs to suitable objects on or near paths to help people find their way;
- providing seats, shelters and lighting on public paths (Parish Councils Act 1957 sections 1 and 3);
- putting up notices warning of danger on or near a public path with the consent of the landowner and occupier. (Road Traffic Regulation Act 1984 section 72)



Rights Of Way improvement plans

Under sections 60–62 of the Countryside and Rights of Way Act 2000, highway authorities must prepare and publish a 'rights of way improvement plan'. The plan must include an assessment of the local rights of way network and a statement of action for managing and improving it. The highway authority is under a duty before preparing or reviewing such a plan, and in making their assessment, to consult local councils. You should take full advantage of that opportunity.

Notes and definitions

The information in this leaflet is correct as at July 2004. All unitary authorities in England and Wales are highway authorities. Where there is a two-tier structure in England, the county council is the highway authority. The 'surveying authority', responsible for the definitive map and statement of public rights of way, is the same council as the highway authority. National park authorities, and some district councils, undertake rights of way work, but they do so as the agent of the highway authority, which retains ultimate responsibility for seeing that the work gets done.

By the term 'public path' we mean public footpath or bridleway; by 'public right of way' we mean a public path or a way shown on a definitive map as a road used as a public path (RUPP) or as a byway open to all traffic (BOAT). It is important to remember that they are all highways in law. Under Part II of the Countryside and Rights of Way Act 2000, any remaining RUPPs shown on definitive maps will be automatically reclassified as 'restricted byways', on which the public will have a right of way on foot, on horseback and to drive vehicles other than mechanically-propelled ones. An order by the Government is necessary to bring this into effect.

Further reading

The RA and the Open Spaces Society publish a comprehensive textbook on the law on public rights of way in England and Wales, entitled 'Rights of Way: a guide to law and practice'. It contains extensive extracts from many relevant statutes, regulations and government circulars on rights of way. This costs £20 (plus p & p). Please telephone our office to order copies. Our website, www.ramblers.org.uk, is widely recognised as the leading online resource for walkers. Please visit to find out more about our work.

Local councils may also find the following free Countryside Agency publications useful:

- 'Out in the country: where you can and what you can do' (CA 9)*
- 'Waymarking public rights of way' (CA 77)*
- 'A guide to definitive maps and changes to public rights of way' (CA 142)*
- 'Managing public access (guide for farmers and landowners containing a useful summary of rights of way law)' (CCP450)* available from Countryside Agency Postal Sales, PO Box 125, Wetherby, West Yorkshire, LS23 7EP Tel: 0870 120 6566

* Welsh versions also available from Countryside Council for Wales, Maes-y-Ffynnon, Penrhosgarnedd, Bangor, Gwynedd, LL57 2DW Tel: 0845 1306229