

Appendix D

Public Rights of Way

Supplementary Enforcement Procedure

September 2011

1. Enforcement Procedures – General

- 1.1 This procedural document should be read in conjunction with Herefordshire Council's overarching 'Enforcement and Prosecution Policy.
- 1.2 Keeping rights of way open and unobstructed is a vital element in ensuring that paths are well used and enjoyed by all. Much of the legal responsibility for keeping the paths clear of various obstructions rests with the occupiers over whose land the rights of way pass. Unfortunately certain occupiers do not fulfil their responsibilities with a result that many rights of way in the county are obstructed despite there being adequate furniture and waymarking.
- 1.3 In order to ensure that Herefordshire Council is seen to be dealing with breaches of legislation in a fair and open manner, it is important to set out the Council's approach to enforcement. It is also important to ensure that this approach is widely communicated to occupiers so there can be no confusion or doubts.
- 1.4 Occupiers will generally be given the opportunity to remove obstructions from paths without recourse to enforcement action by the Council. However, Herefordshire Council have themselves a legal duty to ensure rights of way remain unobstructed and available to use and have been given the tools to carry out this duty. These tools are a wide variety of enforcement powers which allow the Council to serve notice, re-claim costs for direct action and to prosecute.
- 1.5 There are two offences which occur regularly within the county; these are ploughing and cropping of rights of way. A more robust approach to enforcement is required if the cycle of repeated non-compliance and requests for improvement is to be broken.
- 1.6 The following procedures set out the way breaches of legislation will be dealt with and provide a timescale for doing so. It is important to recognise that it may not be possible to strictly adhere to these timescales due to the circumstances of some cases, factors beyond the Council's control and resources.

2. Procedures for dealing with various obstructions

- 2.1 In most cases, the occupier will be requested to remove an obstruction within two weeks or a time agreed with the officer dealing with the case. If, after the expiry of that period, the obstruction still remains, the occupier will generally be served a notice or the matter will be referred to the magistrate's court depending on the type of offence. The following are the procedures that will be applied to number of common offences.

OVERHANGING HEDGES, TREES OR SHRUBS

- 2.2 In the event of the landowner not carrying out the work as requested, the following will normally apply. If a hedge, tree or shrub (commonly referred to as vegetation) overhangs a right of way to such an extent that it obstructs or endangers users such that an offence is committed under **section 154 of the Highways Act 1980**, the occupier of the land from which the offending vegetation is growing will be required, by notice, to cut back as much of the vegetation as is required to allow for free passage. In the event of non-compliance the Council can arrange to have the work carried out and recover the costs incurred from the occupier.

FENCES

- 2.3 New fences constructed across a right of way can only be authorised by the Council where they are required for stock control purposes. A fence will be regarded as being new if it is not shown on the current 1989 definitive map. If an occupier wishes to erect a new fence and it is for the purpose of stock control, they should apply to the Council for authority to erect the fence under **section 147 of the Highways Act 1980**. If the Council is satisfied that the fence is required for stock control purposes, they may authorise the fence line. This will generally be on the condition that a gate, provided by the occupier, is erected on the legal line. Stiles will only be authorised in exceptional circumstances and following consultation with a senior rights of way officer. Any unauthorised fences will be regarded as an unauthorised structure (see 2.10 below)

FALLEN TREES

- 2.4 Generally trees that fall across rights of way belong to the occupier of the land adjoining the right of way. The occupier will normally be requested in writing to remove the tree within 14 days. If the occupier subsequently fails to comply, the matter will be regarded as an unlawful deposit (see 2.9 below)

DAMAGE TO THE SURFACE

- 2.5 Damage caused to the surface of a right of way that causes an inconvenience to users is an offence under section **131A of the Highways Act 1980**. The person responsible will normally be asked to make good the damage within 14 days. If the person responsible fails to comply, the Council will consider a prosecution.

MISLEADING SIGNS

- 2.6 A person who erects a sign on or adjacent to a public right of way, aimed at deterring users, or provides misleading information, is committing an offence under either **section 132 of the Highways Act 1980**, or **section 52 of the National Parks and Access to the Countryside Act 1949**, depending on the circumstances. The occupier on whose land the notice is erected will in most cases be required to remove the notice within 14 days. If the occupier fails to comply the Council will consider arranging for the notice to be removed within a further 14 days after a notice **under section 69 of the Road Traffic Regulations Act 1984** has been served. Costs will be recovered from the occupier.

DANGEROUS ANIMALS

- 2.7 Any reports of dangerous animals or attacks on users of a right of way by dangerous animals will be either reported to the Police to be dealt with or passed on to the Health and Safety Executive.

BULLS

- 2.8 Any reports of bulls at large in a field that is crossed by a right of way will normally be followed up within 2 working days to ascertain if an offence has been committed. Bulls are permitted in the following circumstances:

All breeds less than 10 months old, alone or with others.

Non-dairy breeds over 10 months accompanied by cows or heifers.

The following are not permitted:

Dairy breeds over 10 months alone or with others
Non-dairy breeds over 10 months alone

Upon identification, or following discussion with the occupier, the occupier will be advised of the legislation and requested to comply. A letter will be sent confirming the discussion and advising the owner that any further offences will be reported to the Health and Safety Executive for action. If the landowner cannot be contacted, the matter will be referred directly to the Health and Safety Executive.

UNLAWFUL DEPOSIT

- 2.9 In the event of report being received of something having been deposited on a right of way, which is considered a danger to users, the Council will remove it immediately. If they consider it has been deposited deliberately or as a result of neglect, they may seek to reclaim the costs involved. In most other circumstances the occupier will be requested to remove the deposit within two weeks. In the event of the deposit not being removed, the Council will seek to serve notice under either **sections 149 or 150 of the Highways Act 1980**. Costs will be recovered from the occupier of the land

UNAUTHORISED STRUCTURE

- 2.10 In the event of a report being received of some form of structure being set up on a right of way and causing an obstruction, the occupier will be asked to remove the structure within 14 days. In the event of non-compliance the Council will serve a notice under **section 143 of the Highways Act 1980**. If the structure remains after one month time the Council will carry out the work and recover the costs from the occupier.

DAMAGED OR INOPERABLE STILE AND GATES

- 2.11 In the event of the occupier being requested to install the furniture the following will apply. The occupier will be requested to make appropriate repairs within a reasonable time agreed with the warden / officer but not more than 4 weeks. If the occupier fails to carry out the work, the Council may serve notice under **section 146 of the Highways Act 1980** on the occupier requiring them to comply within 14 days. Non-compliance will result in the Council carrying out the work and recovering costs and **may result in the Landowner losing the opportunity to claim the minimum 25% grant.**

DANGEROUS SITUATIONS

- 2.12 If Herefordshire Council considers an obstruction on a rights of way an immediate danger to the public, or it considers that something adjoining a right of way is a danger to users of the right of way, it reserves the right to remove of the source of danger immediately and claim the costs for doing so from the occupier.

OTHER TYPES OF OBSTRUCTION

- 2.13 Other obstructions will be dealt with in accordance with the general procedures set out in paragraph 2.1 and in line with statutory legislation and guidance notes.

3. Ploughing and cropping offences

- 3.1 A large proportion of the Herefordshire countryside is cultivated and planted with various types of crops. All crops across a right of way have the effect of deterring users, causing an inconvenience and in many cases a total obstruction. It is for this reason the government issued legislation in 1990 to provide local authorities with the ability to deal with the problem. Experience has identified that many occupiers will not comply with the legislation until requested to do so by the Council. The Council takes the issue of ploughing and cropping rights of way seriously and land occupiers should be in no doubt that a robust and consistent approach to keeping rights of way clear will be taken. The essence of the procedure set out below is that occupiers will normally be given two warnings and then may be prosecuted without prior notice on the third breach of legislation.

First Breach of Legislation

- 3.2 If it is the occupier's first breach of legislation they will be asked to reinstate the path both verbally (if possible) and in writing, advised of their legal obligations and issued details of Herefordshire Council's Enforcement and Prosecution Policy and any associated procedures. If they comply, no further action will be taken. Note: - In the case of ploughing, an occupier will be deemed to have been advised even if they receive appropriate paper work from the Council before the statutory 14 days allowed to reinstate the path expires.

Second breach of legislation

- 3.3 If the occupier has been advised, in writing, of their legal responsibilities in relation to a breach of legislation once in the past 5 years, they will automatically be served a notice under schedule 12a of the Highways Act 1980.

Third breach of legislation

- 3.4 If the occupier has been advised of their legal responsibilities at least twice in writing or has been served a schedule 12a notice in the past 5 years, evidence will be gathered with a view to prosecuting the occupier or issuing a formal caution. This applies regardless of whether the occupier has complied with any paper work that has been served on them in the past.
- 3.5 In some cases, particularly where the path in question is a field edge path, the occupier may be advised at the second breach of legislation stage that the matter will be referred to the County Secretary and Solicitor for consideration to prosecute, rather than serve a notice.

4. Procedures for dealing with Ploughing and Cropping Offences

Initial action

- 4.1 Upon receipt of a reported breach of legislation, the report will be logged onto the database. If the report is by letter, email or fax the report should be acknowledged and the reportee advised of the defect number.

First stage - advisory action

- 4.2 The Area Rights of Way Warden (the Warden) will inspect the site of the alleged breach within 10 working days of notification. If this is not possible the Warden should advise their line manager of the reasons and agree a timescale for inspection or an alternative approach.
- 4.3 Upon confirmation of a breach of legislation the Warden will ascertain the details of the occupier of the land at the date of inspection. The Warden will then ascertain whether the occupier has been informed about a breach of legislation in the past five years or if a notice has been served.
- 4.4 If it is the occupier's first offence, the Warden will try to seek a meeting with the occupier on site within 5 working days to explain the details of the offence and the occupier's obligations. A confirmation letter will be sent as soon as is practicable following any meeting, such letter to include:
- confirmation of the issues discussed at the site meeting
 - details of the offence
 - a plan showing the location of the offence
 - what is required to comply with the legislation
 - details of the Council's enforcement policy and ploughing and cropping procedures
- 4.5 The occupier will be advised, in the case of a ploughing offence, that the path should be reinstated within 14 days and in the case of a cropping offence reinstatement should be completed within 7 days
- 4.6 If the occupier has been advised of their obligations in writing in connection to a breach of legislation before within the last 5 years the matter will be considered for enforcement action
- 4.7 The Warden will re-inspect the right of way within 5 working days of the expiry of the time given to the occupier to reinstate the path. If the work has been carried out to reinstate the path in line with legislation, the Warden will write to the occupier thanking them for cooperation and advising what future action would be taken should any further breaches of legislation be confirmed on land in their occupation.
- 4.8 If no work has been carried out, the Warden will pass on the details of the case to the Area Officer

Second Stage – Enforcement Action

- 4.9 The Area Officer will ascertain how many times the occupier has been contacted in writing and advised of their duties in regards to the legislation in the past.
- 4.10 If the occupier has been advised of their obligations once in the past 5 years, the Area Officer will inspect the path within ten working days. If a breach of legislation has occurred, they should write to the occupier setting out the occupier's obligations, and including a Schedule 12a Enforcement Notice. The covering letter should include details of what works are required to reinstate the path. The Enforcement Notice will set out the Council's intention to take direct action and recover costs if reinstatement works are not carried out within the specified period. The specified period will normally be 7 days. The Notice will contain the following:

- That the Council intends to enter onto the land to carry out the necessary reinstatement work.
 - The earliest date and time that the work will be undertaken.
 - The nature of the work, and the equipment to be used.
 - The lines of access that will be used (this does not have to be along the line of the right of way).
 - The final date by which the occupier can complete the work and inform the Area Officer without being liable to incur any costs. This date will be 4.00 p.m. two working days prior to the enforcement action being carried out.
- 4.11 The Area Officer will advise the occupier that the reinstatement work by the Council will only be cancelled subject to: -
- The work having been carried out to the satisfaction of the Area Officer, and;
 - The Area Officer being advised two working days prior to any enforcement action being carried out that the occupier has completed the works.
- 4.12 The Area Officer will provisionally arrange for the work team to carry out the reinstatement work, with confirmation being given the day before the works are to be undertaken. If the Area Officer is of the opinion that the occupier may cause a breach of the peace, the local police will be requested to attend. A final letter will be sent to the occupier setting out the date the Council intends to carry out reinstatement works. Ideally this will be no more than 5 days after the earliest time set out in the notice.
- 4.13 A final inspection of the right of way will be undertaken the day before the enforcement works are to be carried out to ascertain whether or not the work has been completed. In the event of the works having been completed and the Council not informed, any costs that have been incurred will be recovered from the occupier.
- 4.14 On the day of the enforcement works, if the works have been completed by the occupier to the satisfaction of the Area Officer, any costs that have been incurred will be recovered from the occupier of the land. If the works have not been completed, the Area Officer will meet the work team (and the police if requested) reasonably close to the site where the works are to be undertaken. The Area Officer will brief the work team and, if present, provide the police with copies of the appropriate information.
- 4.15 The following information will be made available: -
- A copy of the Definitive Map and Statement relating to the right of way in question.
 - Copies of the schedule 12a notice(s).
 - Copies of all other relevant correspondence.
- 4.16 Once briefed, the work team will proceed to the prearranged access point while the Area Officer and the Police, if present, visit the occupier of the land to inform them that the works are to be carried out. The work team will not enter onto the land or commence any work until authorised to do so by the Area Officer.
- 4.17 Before any works are carried out the Area Officer will mark out the line of the path to be reinstated for the work team. This will include the width to be reinstated which will be within the maximum width but no less than minimum width as set out below.

Status	Minimum width*	Maximum width*
Cross-field footpath	1.0m	1.8m
Field-edge footpath	1.5m	1.8m
Cross-field bridleway	2.0m	3.0m
Field-edge bridleway	3.0m	3.0m
*Widths as stated in Rights of Way Act 1990		

- 4.18 The Area Officer will supervise the work team at all times with particular attention being made to the correct line. In the event of any threat of violence, the Area Officer and work team will take the advice of the Police if they are present, or withdraw from the site immediately and contact the Police
- 4.19 Once the works have been carried out, a letter and bill will be forwarded to the occupier of the land who will be recharged all reasonable costs incurred. The letter will advise the occupier of the action that will be taken should the Council become aware of another breach of legislation occurring on land they occupy.
- 4.20 The actions will be recorded on the database and the case closed.
- 4.21 If the occupier has been advised of their legal responsibilities twice or more within the last five years, including the serving of a schedule 12a notice, the Area Officers will discuss the matter with the rights of way manager with a view to initiating prosecution proceedings (see section 5.0)

5. Responsibility for implementing policy

- 5.1 The Head of Service is responsible for ensuring that policy and procedure is implemented and that all staff that might deal with enforcement are fully trained.
- 5.2 The service manager and Rights of Way Manager are responsible for ensuring officers wanting to carry out enforcement duties follow the procedures and appropriate Home Office guidelines.
- 5.3 Legal Services will be responsible for offering, guidance and legal representation / support to officers wishing to carry out enforcement.
- 5.4 Officers with an enforcement role must be aware of the policy and guidelines for prosecution.
- 5.5 The decision as to whether to proceed with a prosecution will be taken by the rights of way manager in consultation with the Service Manager and the County Secretary and Solicitor after full consideration of the case.
- 5.6 The decision as to whether to proceed with direct action can be made by the Area Officers.

Ploughing and Cropping Flow Chart

