

Public rights of way

A guide to rights
and responsibilities



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Introduction

This guide covers the rights and responsibilities, including enforcement, associated with public rights of way. It explains some of the legislation that applies to public rights of way and how the council applies this legislation to various issues.

How well this legislation protects the public rights of way network, and the rights of the public, depends on the compliance of regulated landowners, occupiers and lessees. The council has adopted the central and local government 'Concordat on Good Enforcement'. This sets out the general enforcement principles, policies and approach we follow in our dealings with others.

The council provides advice and information in relation to public rights of way issues. We are open about our work and are keen to discuss general issues or specific problems. Our officers work with landowners, occupiers and users of public rights of way to provide an efficient service. In cases where disputes cannot be resolved without formal enforcement, any right of appeal or complaints procedure will be explained, with details of the process and the likely timescale. This guidance does not prevent the council taking immediate action without notice

to abate a nuisance. For repeat or persistent offenders, we may miss out informal stages of enforcement.

This information is a guide only and does not cover every detail of public rights of way legislation and case law. You can ask for independent legal advice on any aspect covered by this information - it is not intended as a substitute for that advice.

Government advice for local authorities is produced by DEFRA

www.gov.uk/government/publications/rights-of-way-circular-1-09



Types of public rights of way

There are four types of public rights of way:

1. Public footpaths – where the public has a right of way on foot and with a wheelchair, pushchair or pram.
2. Public bridleways – where the public has a right of way on foot, with a wheelchair, pushchair or pram, on horseback or leading a horse, and on a bicycle.
3. Restricted byways – where the public has a right of way on foot, with a wheelchair, pushchair or pram, on horseback or leading a horse, on a bicycle, and by horse drawn vehicle. Other vehicles may have the right to use a restricted byway.
4. Byway open to all traffic (BOAT) – where the public has a right of way on foot, with a wheelchair, pushchair or pram, on horseback or leading a horse, on a bicycle, in a motorised or non-motorised vehicle, and driving animals.

As public highways, public rights of way enjoy the same protection (provided by the Highways Act) as 'proper roads'. They also enjoy additional protection provided by 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.



Who is responsible for what?

The council's responsibilities include:

- keeping public rights of way clear of undergrowth which is vegetation growing in the surface of the path;
- assisting farmers and landowners with maintenance of stiles and gates;
- signposting public rights of way where they leave the surfaced road;
- waymarking paths to help users find their way; and
- maintaining most bridges and culverts.

Landowners' responsibilities include:

- keeping any public rights of way on their land clear of overgrowth such as hedge outgrowth across the path for example;
- maintaining any authorised stiles and gates which they need on public rights of way;
- keeping public rights of way free from obstruction - including growing crops;
- not ploughing field edge public rights of way, or any Restricted Byway or Byway Open to All Traffic;

- reinstating cross-field public rights of way after ploughing for example (in accordance with the Rights of Way Act 1990); and
- applying for a temporary closure if undertaking any work which may affect a public right of way or endanger its users.

A **landowner** is responsible for keeping public bridleways or byways free from overhanging vegetation, from encroachment or obstruction, from crops, and for ensuring authorised gates and stiles are convenient to use.

The council, as the **highway authority**, is responsible for the surface, including natural vegetation (not a crop) growing from it, and for the public right of way being clearly marked and available.

Path users should keep to the public right of way, follow the countryside code and consider other users.

The council will try to resolve issues in a professional and friendly manner. Our legal duty is to protect the rights of the public to use public rights of way.

Widths

No specific rule applies to the width of a public right of way. In Kirklees, most public rights of way have a minimum width recorded in the Definitive Map and Statement (see below). The width may also be detailed in a historical document, it may be the distance between two boundaries, or a measurement that users are familiar with. If none of these situations are relevant, the following minimum widths will apply:

- Public footpath - 1 metre
(1.5 metres for a field-edge path)
- Public bridleway - 2 metres
(3 metres for a field-edge path)
- Restricted byway or byway open to all traffic - 3 metres

The width of a public right of way can be affected by encroachment (see page 16), ploughing and crops (see page 12) and obstructions (see page 13).

Rights of Way Act 1990, Highways Act 1980 Schedule 12A



The Definitive Map and Statement

The council is responsible for the Definitive Map and Statement which is a legal record of the public's right of way in Kirklees. If a public right of way is shown on the map, it proves that public rights exist along that route unless a change has been legally authorised.

There may be additional public rights over land that have not yet been recorded on the map, or rights that have been incorrectly recorded. The Definitive Map and Statement can be amended by legal order if evidence of missing rights of way is discovered, or to correct errors in previously recorded information.

The Definitive Map and Statement is available for public viewing at: PROW office, Civic Centre 3, off Market Street, Huddersfield, HD1 2PL during office hours.



Surfaces

As the Highway Authority, the council is responsible for the surface of public rights of way and it 'owns' and maintains the surface to an appropriate standard in most cases. The landowner's interest only extends to the sub-soil. The council could be liable if an injury was related to the surface of the public right of way.

It is an offence to interfere with the surface of a public right of way. This means that the landowner or occupier may not dig up or even resurface a public right of way without the council's permission. Landowners and occupiers must make sure that their private use of the route, in motorised vehicles for example, does not damage the surface of the path. If damage is caused, it must be put right by the landowner or occupier.

For a first offence, we will ask the offender to put the surface back to its intended state within a specified time, depending on the level of damage and the work required. If this work is not done to our satisfaction, a notice will be served giving the offender a reasonable amount of time to get the work done. If the damage is still not repaired, we will carry out the work and claim the costs back from the offender. If the offender damages the surface again, we will serve a formal notice immediately and may consider prosecution.

It is also an offence to dump or deposit on public rights of way. The council may require removal and seek prosecution.

Landowners could be liable for any injuries to the public caused by their actions.

Occupiers Liability Act 1957



Cross compliance (single payment scheme)

If a landowner or 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' 'Good Agricultural and Environmental Condition Standards' and 'Statutory Management Requirements'.

Landowners and occupiers must meet these standards to be able to qualify for the single payment scheme. If a landowner or occupier fails to comply with an enforcement notice issued by the council in relation to public rights of way, details of the offence will be sent to the Rural Payments Agency and their single payment scheme may be affected. The council will try to resolve the problem by co-operation first.





Dangerous animals

It is an offence for the owner or occupier of land crossed by a public right of way to allow a bull over ten months old to be alone on the land. It is also an offence to allow any bull of a recognised dairy breed to be on the land, even if it's with cows.

Bulls under ten months-old, or bulls which are not of a recognised dairy breed that are on the land with cows or heifers, are exceptions to this rule.

It may be an offence if an animal, known to be dangerous by its keeper, causes injury to a member of the public using a public right of way. The animal's keeper could be sued by the injured party.

Animals presenting a danger to the public, or intimidating path users, may also be treated as an obstruction or nuisance.

Wildlife and Countryside Act 1981 section 59, see also Animals Act 1971 section 2

Dogs belonging to path users

Dogs are allowed on public rights of way. They don't have to be on a lead but should be kept under close control at all times and it's your responsibility to clear up after your dog if it fouls. It is an offence to allow a dog to chase livestock or be at large in an enclosed field with sheep. A path user who allows a dog to wander off the public right of way becomes a trespasser and the landowner or occupier has the right to ask them to leave the land. Dog owners are advised to use leads if their dog is likely to wander off the line of the path, or worry livestock.

Hazards

We sometimes see unfenced hazards on adjoining land that could be dangerous for path users. We have a duty to protect path users from such dangers so we will ask the landowner or occupier of the land to remove the danger, or make sure that it is adequately fenced in. If this is not done, we can serve a notice on them to make the area safe. If the landowner or occupier does not comply with the notice, we may carry out the work and recover the costs from them.

Highways Act 1980 section 165



Ploughing and crops

In some circumstances, landowners or occupiers can plough on a public right of way if it is unreasonable to ask them to avoid it. This only applies to cross-field public footpaths and public bridleways - other public rights of way should never be ploughed.

If a cross-field public footpath or public bridleway is ploughed, it must be put back to its original state (see 'widths' on page 6) within the 'statutory time limit' to avoid breaking the law. This time limit is 14 days for the first disturbance of the cropping cycle and 24 hours for any further disturbance, such as harrowing and drilling.

Rights of Way Act 1990, Highways Act 1980 section 134

Where a crop (other than grass) has been planted or sown on land crossed by a public right of way, the landowner or occupier must make sure that the public right of way is clear of the crop by at least the minimum width (see 'widths' on page 6).

Rights of Way Act 1990, Highways Act 1980 section 137A

Ploughing and cropping on public rights of way can be a major problem if the path is no longer in its intended state.

For a first offence, we may carry out an informal interview (recorded in writing) with the landowner or occupier to explain the situation. They will be given seven days to put the path back to its intended state. If this is not done to a satisfactory standard, we may serve a formal legal notice to give the landowner or occupier a further seven days to carry out the work. If the path is still not put back, we may carry out the work and claim the cost back from the offender.

If the offender puts the path back to its intended state within the first seven-day timescale but then repeats the offence later, we may immediately serve a formal legal notice as set out above. We may also consider prosecution for any further offences.



Obstructions

Obstructions are often simple misunderstandings that are easily dealt with. They can be 'historical', or the result of recent development work where the landowner or occupier has not taken sufficient account of the public right of way.

The landowner or occupier may be liable if injury is caused by an obstruction that they have created. For example, if a walker is injured by an electric fence put across a path, they may make a claim against the person who put it there.

The council has a duty to remove all obstructions on public rights of way and we have the right to remove anything, without consultation, that we class as an obstruction, a danger or an encroachment. But we will usually contact the landowner or occupier first to ask them to deal with the problem. If the landowner or occupier ignores this request, they will be issued with an informal notice giving them seven days to comply. If the obstruction is not removed within seven days, a formal legal notice is served requiring the offender to remove the obstruction within a specified time. If this is not done, we will remove the obstruction and claim the cost back from the offender. We may also consider prosecution for any further offences. Prosecution for wilful obstruction may result in a fine of

£1,000 per offence, potentially rising to a £5,000 fine, with additional £250 daily penalties for continuing obstruction.

Highways Act 1980 sections 137, 137ZA & 143, section 37, Criminal Justice Act 1982

Longstanding (historical) obstructions on public rights of way may have been 'inherited' but the current landowner or occupier must remove the obstruction within a specified time. If this isn't done, we may take enforcement action to have the obstruction removed and claim back the cost from the offender. We may also consider prosecution for any further offences.

If the obstruction is substantial (of considerable size, importance or worth and requiring major engineering works to remove or to reinstate public passage) and longstanding, or if it's substantial and being lived in, we will offer the landowner or occupier the opportunity to apply for the path to be diverted satisfactorily instead. The council would determine a reasonable timeframe for an application to be made. We would expect the owner to make an alternative route available until the diversion has been completed. There is no guarantee of success for applications and the council's costs would generally be payable

If the landowner or occupier does not deal with the obstruction, either by removing it or by applying for a diversion, they may face prosecution and a court order to remove the obstruction. If the council refuses an application to divert a path, then the landowner or occupier must make sure that the path is available to the public as originally intended and remove the obstruction. Again, failure to do this may result in prosecution and a court order.

Electric or barbed wire fences and other livestock control

An electric fence, barbed wire fence or exposed barbed wire put across a public right of way without a safe means of crossing is an offence. It is an obstruction, a nuisance and a danger to users of the public right of way. The council will remove it or ask the owner of the fence to remove it immediately. If the landowner considers the fence to be necessary for agriculture, the owner may wish to provide an adequate means of crossing it on the line of the path.

This crossing would be classified as a new structure (see 'stiles and gates' on page 16) so the owner would need the council's authorisation to put it in place. If the owner fails to agree to either course of action, or their request is refused, we may remove the fence where it affects the path without further notice.

If the owner continues to commit further offences of this nature, the council will consider prosecution for obstruction.

Highways Act 1980 sections 137, 137ZA, and 149

Where an electric or barbed wire fence runs alongside a public right of way, it may be a danger and a nuisance to members of the public. Electric fences would be considered a nuisance unless adequately marked by notices to warn the public. If we think the fence is a danger to the public, we'll ask the landowner or occupier to make it safe for path users. If they refuse or fail to do this, we may serve a legal notice requiring them to remove the source of danger within a specified time. Failure to comply with the notice may result in the council removing the fence and recovering costs from the offender.

Highways Act 1980 sections 164 and 165



Ropes

If a rope or wire is causing an obstruction on a public right of way we will remove it and then tell the landowner or occupier why we have done this. If removal of the rope would cause livestock to stray, we will contact the landowner or occupier first and ask them to remove the rope. If the landowner or occupier fails to do this, or puts up another rope after one has been removed, they may face prosecution.

Highways Act 1980 section 162

Hedges and trees

In most cases, the council is not responsible for the maintenance of hedges and trees alongside public rights of way. If a hedge or tree overhangs or obstructs a public right of way, we have the right to remove the overgrowth to prevent obstruction to path users. Or we can ask the owners of overhanging hedges and trees to cut them back within 14 days.

Highways Act 1980 section 154

If hedges or trees block light or airflow on a public right of way, we will talk to the landowner or occupier and ask them to cut back the vegetation. Or we may offer to work with them to do this as part of a larger maintenance project. If they don't co-operate, we can seek an order that requires the owner to cut back the vegetation within a specified time.

Highways Act 1980 section 136

If a fallen tree branch obstructs a public right of way, we will contact the tree's owner and ask them to remove the branch within a specified time. If they fail to do this, we will remove the branch and claim the cost back from the owner. If necessary, we may remove the branch immediately.

Highways Act 1980 section 150 (4) (c)

Encroachment

An encroachment is an unlawful obstruction of a public right of way. The council will investigate an encroachment, or alleged encroachment, and take appropriate action.

We will consider if there is an actual encroachment and if it affects the public right of way, or may affect it in the future. We may need to carry out research to establish the legitimate width of the public right of way (see 'widths' on page 6).

If there is an encroachment but it does not affect the public right of way or its users, we may regard it as 'de minimis' – from the Latin meaning 'lacking significance or importance'. In such cases, we will tell the person responsible for the encroachment that their actions are unlawful and any additional encroachment will result in enforcement. We may take further action at a later date.

If we consider that an encroachment does affect a public right of way and its users, we will give the person responsible for the encroachment a reasonable amount of time to remove it. If this is not done, we will take further action to have it removed.

Stiles and gates

Landowners and occupiers must make sure that formally recorded and authorised stiles and gates are kept in a good state of repair. The council's duty is to make sure landowners and occupiers meet this obligation and we may offer a grant of 25% towards repairing such stiles and gates.

Highways Act 1980 section 146

A stile or gate may be formally recorded in the Definitive Map and Statement and may have been authorised by a formal written authority from the council under the relevant legislation.



If a landowner or occupier wants to put a new gate on a public right of way, they must apply in writing to the council for permission. Permission won't usually be given for any additional stiles because they are not suitable for people with limited mobility. Permission for new gates will only be given if they are necessary to control animals. Putting up a gate without permission may be regarded as a criminal offence (see 'obstructions' on page 13).

Highways Act 1980 section 147

View DEFRA's good practice guidance on authorising structures at:

archive.defra.gov.uk/rural/documents/countryside/prow/gpg-equality.pdf

If a gate crosses an enclosed public right of way, such as a lane enclosed by hedges, then it should be unlocked even if there is a stile or gate alongside it off the path. A locked gate could be regarded as an obstruction and may be dealt with as such unless it is preventing livestock escaping onto a road. If this is the case, an alternative means of access must be provided alongside the locked gate.



Misleading and unlawful signs

These signs and notices often stop people from using public rights of way and the council has a duty to make sure this doesn't happen. We have the right to remove any misleading or unlawful signs placed on public rights of way. If the sign is on land next to a public right of way, we can apply for a court order to get the offender to remove it, or be fined regularly until they do remove it.

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

Road Traffic Regulation Act 1984, Section 69



Signs and waymarks

These are traffic signs and it is against the law to interfere with them, damage or remove them. Anyone found carrying out such an offence is liable to be prosecuted.

Section 22A, Road Traffic Act 1988

Police matters

Some situations can put the public in danger - aggressive or abusive behavior or unauthorised driving on a public right of way for example. Such incidents should be reported first to the police who have powers to deal with them.

Section 34, Road Traffic Act 1988

Further information

Visit the website at: www.kirklees.gov.uk/rightsofway

Telephone: **01484 221000** and ask for 'public rights of way'

Email: publicrightsofway@kirklees.gov.uk

Postal address:

**PROW Unit, PO Box B93, Market Street,
Huddersfield, HD1 2JR**



Useful contacts

- Call: 101 for non-emergencies where police attendance is required.
- Health and Safety Executive (HSE) - www.hse.gov.uk/contact
- Kirklees Dog Wardens Service – ring: **01484 221000** and ask for 'dog wardens'
- National Farmers' Union (NFU) www.nfuonline.com/about-us/contact-us/ or ring: **024 7685 8500** (general enquiries)
- Country Land and Business Association (CLA) – ring: **020 7235 0511** or email: mail@cla.org.uk

Kirklees Public Rights of Way

We would like to acknowledge the support of Cheshire East Council in the production of this guide.

Published in consultation with NFU, CLA, PROW Forum attendees, Cllr Cathy Scott, WY Police and HSE.

