

# Rights of Way Improvement Plan 2



Appendix B: Maintenance & Enforcement Policy  
April 2014

[WWW.SOMERSET.GOV.UK](http://WWW.SOMERSET.GOV.UK)



This document is also available in Braille, large print, on tape and on disc and we can translate it into different languages. We can provide a member of staff to discuss the details.



**RNID typetalk**

## Maintenance Policy

The management of the Maintenance function of Public Rights of Way (PRoW) in Somerset is governed on a national level primarily by the statutory legislation of the Countryside Act 1968, the Highways Act 1980, the Wildlife and Countryside Act 1981, the Countryside and Rights of Way Act 2000 (CRoW 2000), the Natural Environment and Rural Communities Act 2006 (NERC 2006) and a variety of regulations, guidance and central government policies.

### Foremost Duties and Powers relating to Public Rights of Way

|                      |   |
|----------------------|---|
| <p><b>Duties</b></p> | <ul style="list-style-type: none"> <li>• <b><i>To assert and protect the rights of the public to the use and enjoyment of any highway for which we are the highway authority, including any roadside waste which forms part of it. [Highways [HA80 s130; amended CROW2000 s63]</i></b></li> <li>• <b><i>To have regard to the needs of people with mobility problems when authorising stiles etc [CROW2000 s69]</i></b></li> <li>• To maintain highways maintainable at public expense [HA80 s41]</li> <li>• To enforce provision re; ploughing of footpaths or bridleways [HA80 s34; amended RWA90 s1]</li> <li>• To erect and maintain signposts where any Public Right of Way Traffic (PRoW) leaves a metalled road [CA68 s27]</li> <li>• To erect such signposts if in the opinion of the Highway Authority this is required to assist persons unfamiliar with the locality to follow the way [CA68 s27] unless Parish Councils specifically request otherwise</li> <li>• Compliance with the Disability Discrimination Act 1995 [DDA95]</li> </ul> |
| <p><b>Powers</b></p> | <ul style="list-style-type: none"> <li>• To erect/maintain signposts along any FP/BW/BOAT [CA68 s27]</li> <li>• Powers as to gates across highways [HA80 s145]</li> <li>• Powers to prosecute on obstructions [HA80 s137]</li> <li>• Authorisation of new barrier [HA80 115b &amp; 66 as amended by CRoW s70]</li> <li>• Duty to maintain highways maintainable at public expense [HA80 s 41]</li> <li>• Maintenance of privately maintainable footpaths &amp; bridleways [HA80 s50],</li> <li>• To prosecute for damaging highway, etc [HA80 s131]</li> <li>• To prosecute for disturbance of surface of certain highways [HA80 s131A]</li> <li>• Construction of bridge maintainable at public expense [HA80 s91]</li> <li>• To reconstruct a bridge forming part of a public path [HA80 s92]</li> <li>• To repair stiles etc [HA80 s146]</li> </ul>  |

- To drain highways [HA80 s100]
- To remove unauthorised marks [HA80 s132]
- To remove structures [HA80 s143]
- Ploughing etc of footpath or bridleway [HA80 s134]
- Power to order offender to remove obstruction [HA80 137ZA]
- Interference by crops [HA80 s137A]
- Powers of the Highway Authority in relation to interference with highway [HA80 schedule 12A]
- Power to remove structures from highway [HA80 s143]
- Action on the deposit of things on highway [HA80] s148(c)
- Prohibition on keeping bulls on land crossed by PRow [WCA81 s 59]
- To make Traffic Regulation Orders [RTRA84 s1]
- To make temporary Traffic Regulation Orders [RTRA84 s14 & s 16]
- To require removal of barbed wire [HA8084 s164]
- To require the removal of signs [RTRA s69]
- Action on certain kinds of danger or annoyance for highway users [HA80 s161]
- Carrying Firearms in a public place [FA68 s 19]
- Damage to highway consequent on exclusion of sun and wind [HA80 s136]
- To require felling or cutting of trees or hedges that are overhanging or a danger [HA80 s154; amended CROW2000 s65]
- Fear or provocation of violence [POA86 s4]
- Action on displaying on public paths notices deterring public use [NPACA49 s57]
- To authorise erection of stiles etc on FP or BW [HA80 s147]
- Regulation of cycle racing on public ways [RTA88 s31]
- Control of use of FP and BW for motor vehicle trials [RTA88 s33]
- Action on Dangerous land adjoining street [HA80 s165]
- Action on retaining walls near streets [HA80 s167]

### 1.1 Prioritisation of Public Rights of Way maintenance

The following table illustrates the category system for paths. Given resource pressures, there is a need to prioritise the resolution of problems on the network by making a judgement on the severity of the fault and the category of path that it occurs on. Any faults that pose a serious health and safety risk to members of the public will be treated as a high priority. However, where there is no immediate health and safety risk, faults shall be resolved using the categories below with Category 1 paths being the highest priority, etc. Parish/Town Councils and user groups will be engaged in deciding upon the categories of paths within their areas.

| Category | Description   |
|----------|---|
| 1*       | National & regional promoted trails.                                  |
| 1        | District and parish level promoted routes.<br>Well used local routes. |
| 2        | Occasionally used routes.   |
| 3        | All other paths.  |

Section 130A Highways Act 1980 (as amended by CRow 2000) allows members of the public to serve notice on the County Council to take action to remove certain obstructions from specific PRow. If the complainant is not satisfied that the obstruction has been removed there is recourse to seek an Order from the Magistrates Court to remove the obstruction.

***Highways Act 1980 Section 130A (as amended by CRow 2000 section 63)***

### **1.2 Signposting and Waymarking**

The County Council will ensure that public rights of way are signed in accordance with their correct legal status (unless it considers signage unnecessary and the parish council agree) where they leave metalled routes.

Installation of new or replacement rights of way signposts will normally be by provision of a timber finger post with directional arrow and status of the right of way. Some sealed surface paths in urban areas will not be signed.

Where the right of way forms part of a promoted route (eg. National Trails, regional routes, other long-distance paths or local circular walks) the Council may consider more detailed signage and waymarking, such as named routes, specific destinations, distances, etc. and will seek to meet the extra costs involved either from internal or external funding sources. Waymarking will be consistent with standard guidance as set out by Natural England in "Waymarking Public Rights of Way"

The County Council will provide adequate waymarking or other signage as appropriate wherever there might otherwise be difficulty in following the route of a path.

***Countryside Act 1968 s27***

### **1.3 Maintenance of 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 provide a grant of 25% towards repairing or replacing such structures. The County Council has a discretionary power to extend this grant.

***Highways Act 1980 s 146***

When considering the replacement or installation of new gates and stiles, the County Council will seek the least restrictive option following the priority principle of BS 5709 of gap, then gate, then stile; The Council will not permit replacement furniture of a

more restrictive character. Where the Council requests a less restrictive option it may meet any extra costs involved (e.g. where a kissing-gate is installed to replace a stile) either from internal or external funding sources.

### ***CRoW Act 2000 section 69 & Highways Act 1980 sections 175A & 145***

Circumstances for which the County Council can provide authorisation for the erection of new stiles/ gates is that the structures are required for stock control purposes, as set out in section 147 HA 1980. Barriers can also be authorised under Highways Act 1980 sections 115b & 66 as amended by the CRoW Act 2000 section 70.

### ***Highways Act 1980 sections 147, 115b & 66 as amended by CRoW Act 2000 section 70.***

#### **1.4. Maintenance of surfaces**

The surface of most PRowS is vested in the County Council as Highway Authority, the landowners interest only extends to the sub soil. The County Council will maintain the surface of PRowS appropriate to their designated route category and status so that they are safe and fit for all lawful public use. Consideration may be made for surface improvements necessary to satisfy new duties set out in the CRoW Act 2000 and the Equalities Act 2010.

Ways over which there are private vehicular rights will receive no higher level of maintenance other than is necessary for the use which is made of the path by the public. The County Council will take enforcement action in appropriate cases if the surface of a PRow is unlawfully disturbed or damaged. (Vehicular damage on BOATS does not apply).

The Council will consider making Traffic Regulation Orders on routes receiving regular or significant damage from vehicular use whether lawful or unlawful, in accordance with DETR guidance 'Making the Best of Byways'.

The County Council is also responsible for ensuring that vegetation growing in the surface of the PRow is kept under control and does not make the route difficult to use. The County Council undertakes annual maintenance, as required, one, two or three cuts on paths dependent upon route hierarchy and vegetation type.

A significant number of PRowS coincide with private drives/ roads used to gain access to property. Some of these may have been surfaced in the past by the County Council. Where this is the case, such routes will now only be maintained to a standard fit for their public use, which is likely to be a much lower standard than that necessary for private vehicular use. Any application for an improvement/change to the surface of a PRow will require a commitment from the applicant to undertake future maintenance of the enhanced surface and may also require a binding legal agreement.

The presumption is made against the authorisation of new sealed surfaces on existing unsurfaced PRowS, unless it can be demonstrated that such a surface is compatible with the existing status and use of the way, and a need for such a change of surface is shown, the Council has to have in mind the increased

maintenance responsibility incurred if authorisation is given. Authorisation may be conditional upon a commitment to third party maintenance in future. In most cases the specification will require the approval of Somerset Highways.

Similarly the preference of the Council is for paths to remain unenclosed. Should a landowner wish to fence or enclose a public right of way they are, by virtue of paragraph 36 (4) Highways Act 1980, obliged to undertake future maintenance of the surface of the enclosed path as the surface of an enclosed path ceases to be maintainable at public expense.

***Highway Act 1980 sections 36 (4), 41, 50.131, 131A and Schedule 12A  
Road Traffic Regulation Act 1984 sections 1, 14, 16***

### **1.5 Maintenance of bridges, culverts and other structures**

The County Council is responsible for most footbridges, but where a public footpath or bridleway crosses a bridge, over which there are private agricultural/ vehicular rights the landowner or other parties may also be responsible for maintenance and repairs. The County Council may consider a discretionary grant towards these works. If such a

bridge is washed away, or has to be demolished for reasons of safety, then the County Council may agree with the landowner to replace it with a footbridge or bridle bridge, as appropriate if vehicular use is no longer required. The County Council would be wholly responsible for the new structure.

Repair/replacement/provision of significant structures will be prioritised primarily on the basis of structural condition and the risk of danger to the public. Missing bridge locations compared to existing dangerous structures do not pose as great a danger to the public, therefore missing bridges will be treated as low priority. However, examples of discretionary considerations in prioritising significant structural works include the relative impact it is having on the local network, public use, heritage value, and whether early intervention will be financially beneficial in the long term. The Rail Authority, Highways Agency, Environment Agency, Land Drainage Boards and Canal & Rivers Trust retain maintenance liability for many of their structures. The County Council would make no contributory grant to such bodies for maintenance of these structures.

Other lawful structures necessary to safeguard the availability of a PRow requiring maintenance works may receive a contributory grant from the County Council dependent upon other private interests in the structure.

***Highways Act 1980 sections 91, 92, 328(2) & 146***

### **1.6 Drainage and flood alleviation works**

Somerset County Council shall comply with section 100 Highways Act 1980, and sections 23 & 25 Land Drainage Act 1991 regarding drainage issues in relation to public rights of way as well as any byelaws that may be applicable.

In responding to flood alleviation schemes that cause a PRow to flood more frequently or significantly increase the current depth of flooding, the County Council will request that provision be made to protect the rights of the public to the use and enjoyment of PRow. This may be achieved through engineering works, provision of bridges or a diversion of the way.

Agreement will be sought that the future maintenance liability of any new structure resulting from this provision and all associated costs will rest with the organisation carrying out the flood alleviation project.

Where the County Council considers the affect of any such flood alleviation schemes to be of a de minimis nature, no further provision for the ways may be required.

***Highways Act 1980, section 100***

***Land Drainage Act 1991, sections 23 & 25***

### **1.7 Path surveys and inspections**

Inspections of the rights of way network will occur in two ways:

**1.7.1** Ease of use surveys, covering a 10% sample of the RoW network length each year. (2.5% of the network to be surveyed in May, August, November and February). Over a 10 year period, the whole network will have been surveyed, therefore the default path inspection programme is once every 10 years.

**1.7.2** In addition to the above, enforcement and maintenance inspections will take place reactively as a result of a report or complaint. These will be geographically restricted to the vicinity of the occurrence and will be prioritised on risk assessment basis of route category and level of risk posed to the public.

### **1.8 Cycle racing and motor vehicle trials on Public Rights of Way**

Somerset County Council will permit such events over PRowS assuming full compliance by organisers and participants to section 31 & section 33 of Road Traffic Act 1988 (RTA 1988). Authorisation may be withheld in cases where a trial has previously failed to fulfil their duties under RTA 1988, or where other good reasons for doing so exist.

***Road Traffic Act 1988 sections 31 & 33***

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

In instances where the County Council has been made aware of dogs worrying livestock, dog fouling or any other issues involving dogs on PRowS, signs will be provided to landowners requesting users to keep their dogs under close control, or requesting the dog owner to remove dog faeces. Where significant problems arise, liaison with District Councils as to the possible introduction of byelaws will take place.

No existing stile/gate provision will be changed to allow access for dogs onto PRow, consideration will be made in cases where both the relevant landowners and users have requested it. However projects carried out through the RoWIP will encourage landowners to permit new dog gates in areas close to population in order to improve access and prevent damage to existing path furniture.

***See RoW Enforcement Policy, section 2.7***

### **1.10 Dangerous buildings, land and retaining walls adjoining a Public Right of Way**

From time to time the County Council encounters unfenced dangers or defective buildings or structures on adjoining land, which present hazards to path users. Local Authorities have a duty to protect path users from such dangers. The District Council has the first obligation to take action under section 77 Building Act 1984 or sections 165 & 167 Highways Act 1980 and the County Council in the first instance will refer such cases to the relevant District Council for resolution. If the District Council

refuses to take any action then the County Council may act in default under the Highways Act provisions.

The County Council will request the owner of the adjacent land/ structure to remove, repair or adequately fence the danger. The County Council can require the owner of the dangerous land/ structure to carry out the necessary works by service of notice. If the owner does not comply with the notice, the Council may carry out the work and recover the costs from the owner.

***Highways Act 1980 sections 165 & 167.***

### **1.11 Funding of maintenance works & improvements**

Routine maintenance work will be funded by the Rights of Way maintenance budget. Structures and bridges over 6m are funded through Capital monies.

Improvement schemes and non-statutory works will be addressed through the Rights of Way Improvement Plan (RoWIP) or through other sources of funding. The Council will not contribute to the improvement and repair of private roads (except in so far as is necessary to comply with its legal maintenance duties) over which there are also rights of way, unless the damage has been caused due to lawful public use of the way (excluding public use of BOATs)

The Council will not, unless it is necessary in the highway interest, contribute to the provision or maintenance of new fencing on or adjacent to PRow. Improvement schemes addressed through the RoWIP may include the provision of fencing works.

### **1.12 Endorsement of promoted trails**

All new promoted routes in which the County Council is involved will require road junction and crossings to be inspected and approved by SCC Highways Development Control Team prior to their publication.

The RoW Service will require evidence of agreement of permissive paths which form part of a promoted trail for a period of a minimum of 10 years from date of endorsement, and be satisfied with the terms of any such agreement.

Routes developed by individuals/organisations without prior consultation with the Highway Authority will not be endorsed for inclusion on O.S maps, and unauthorised waymarking may be removed. Individuals and organizations will be encouraged to discuss such ideas with the RoW Service in the first instance to assess how their proposal fits in with the strategic RoWIP.

***Highways Act 1980 section 132***

### **1.13 Historical and Archaeological considerations**

When PRow maintenance or improvement works may conflict with sites recorded on Somerset Historic Environment Record, liaison must be undertaken with the Somerset Heritage Centre.

### **1.14 Ecological/Biodiversity aspects**

Rights of Way maintenance and Improvement schemes will comply with guidelines as set out in the Somerset Highways Biodiversity Action Plan.

Any use of herbicides to comply with the Somerset Highways Biodiversity Action Plan.

### **1.15 Environment and Planning**

When physical maintenance or improvement works are proposed, it is important to consider the visual impact of such proposals on the wider landscape, particularly within the boundary of any special environmental designation such as Areas of Outstanding Natural Beauty (AONBs), Special Landscape Areas (SLA)s and Exmoor National Park. Consultation with Local Planning Authorities will be made on cases where planning permission may be required for new routes.

### **1.16 Contractors/Tenders**

The RoW department will comply with the Contract Standing Orders concerning the letting of contracts included in the County Councils constitution.

### **1.17 Cycling.**

The County Council may permit the development of cycleways over existing PRow assuming consent has been sought from all relevant landowners/occupiers, and provided that this does not adversely affect existing public rights. Where suitable the County Council will require new cyclepaths to be available for multi use (i.e wheelchair and equestrian use)

### **1.18 Permissive Path Agreements**

The County Council may enter into Permissive Path Agreements with landowners where it considers there is an apparent benefit to the public in doing so. Permissive Path Agreements will vary in terms and conditions dependent on each case.

Agreements may also be considered as part of a RoWIP proposal.

**Where the County Council has a policy as outlined above it will consider in appropriate cases whether an exception should be made to it on its merits.**

## ***Rights of Way Enforcement Policy***

### **2. Protection of Public Rights**

Somerset County Council will carry out their duty to assert and protect the rights of the public to the use and enjoyment of any highway for which they are highway authority as per Highways Act 1980 section 130. For prioritisation of maintenance and removal of obstructions from PRow please refer to section 1.1.

Land managers will be notified of their obligations as soon as any obstruction is identified. If their voluntary cooperation in removing obstructions is not forthcoming appropriate enforcement action will be taken, this may include immediate removal of the obstruction concerned, the service of a statutory notice and/or the prosecution of the persons responsible. The Council will seek to recover costs of action from the person causing the obstruction.

The main statutory offences relevant to Public Rights of Way are:

***Highways Act 1980 sections 131(1)(b), 131(1)(c), 131(2), 131A, 132, 134, 137, 137ZA inserted by CRow, 137A, 148(c), 164, and schedule 12A.***

## **2.1 Ploughing and Cropping**

Somerset County Council will comply with s134 & s137A Highways Act 1980. Where a footpath or bridleway is ploughed, it must be reinstated within 14 days beginning from when the surface is first disturbed, and 24 hours for any further disturbance such as harrowing and drilling.

Where a crop (other than grass) has been planted or sown on land crossed by a public right of way and renders it inconvenient, 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 width. Additionally, the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season.

The County Council will normally take direct action to remove crops or to reinstate paths where landowners have failed in the duties imposed on them by the Highways Act 1980 s134 and s137A. The appropriate enforcement action contained in the Highways Act 1980 will be followed or the Council will take action under its common law powers. Consideration will be given to prosecuting repeat offenders. All reasonable costs will be reclaimed.

## **2.2 RoW reinstatement widths**

Somerset County Council will assume the minimum widths of PRowS as defined in Highways Act 1980, schedule 12A, it will consider evidence to the contrary on a case by case basis.

If the width of a way is recorded e.g. by inclusion in the statement accompanying the definitive map, that width is the minimum width. If it is not recorded the minimum width is:

- cross field footpath 1.0m
- headland footpath 1.5m
- cross field bridleway 2m
- headland bridleway or carriageway (whether cross field or headland) 3 metres

If the path is deemed unusable or inconvenient to the public a greater width may be sought. If it is demonstrated to the County Council's satisfaction that disturbance has occurred, but it is not materially affecting the path or the rights of users, and a convenient alternative route has been provided the County Council may consider this as acceptable and take no further action.

***Highways Act 1980 section 134 & 137A and schedule 12a***

## **2.3 Obstructions and Encroachment**

The County Council has a statutory duty to remove all obstructions and encroachments to PRow, *Highways Act 1980 section 130*. It has various powers under the Highways Act 1980 to serve notice on persons responsible for obstructions and to take other enforcement action.

The County Council also has a common law right to remove anything that it believes constitutes an obstruction, or encroachment on the public highway without consultation with any other party.

Land managers will be notified of their obligations as soon as any obstruction is identified. Should they fail in their duty appropriate enforcement action will be taken where possible. Consideration will be given to prosecuting repeat offenders. All reasonable costs will be reclaimed. (Obstructions include unauthorised stiles, gates, etc)

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 take this into account in deciding what priority should be given in securing its removal. Persons responsible will be warned of the position and the consequences of any further encroachment.

***Highways Act sections 148(c), 143, 137 & 137ZA***

#### **2.4 Bulls and dangerous animals**

Land managers will be notified of their obligations under Wildlife and Countryside Act 1981 section 59, following any report. Consideration will be given to prosecuting repeat offenders. All reasonable costs will be reclaimed.

***Wildlife and Countryside Act 1981 section 59***

#### **2.5 Electric and barbed wire fences adjoining a Public Right of Way**

If, in the opinion of the County Council, any electric or barbed wire fence alongside a public right of way is a danger or nuisance, then the County Council will 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; there is a right of appeal to the Magistrates Court. Failure to comply with the Notice may result in the Council taking Court proceedings.

***Highways Act 1980 sections 164 & 148(c)***

#### **2.6 Firearms on Public Rights of Way**

Following any report landowners and occupiers will be notified of their obligations under section 161 Highways Act 1980 and section 19 Firearms Act 1968 to ensure that no public nuisance occurs

The County Council will, where it is concerned for the safety of the public using the right of way, refer complaints to the police and consider whether any other enforcement action can be taken.

***Highways Act 1980 section 161 and Firearms Act 1968 section 19.***

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

The County Council will ensure that landowners and occupiers adjacent to any public rights of way meet their responsibilities under Highways Act 1980 section 136 and 154. Failure to do so may result in the County Council taking action to remove overhanging vegetation, or to secure its removal by the landowner. Where formal notice is served all reasonable costs will be reclaimed.

***Highways Act 1980 section 136 & 154***

## **2.8 Intimidating dogs**

It is an offence to keep a dangerous or intimidating dog on a public right of way. It may also be considered a 'public nuisance'. If it is out of control in a public place it is an offence under the Dangerous Dogs Act 1991

The County Council will request the landowner or occupier to take action so that the dog no longer deters members of the public from using the right of way and consider any further enforcement action that might be taken. The County Council may also inform the police and will advise complainants to notify the police directly.

***Public nuisance under common law and Dangerous dogs Act 1991***

## **2.9 Intimidation or threatening behaviour intended to deter use of a Public Right of Way**

Following any report of intimidation or threatening behaviour the County Council will seek to address any underlying issues which have led to the situation arising. Consideration will be given as to what enforcement action might be taken and/or whether complaints should be referred to the police.

***Public Order Act 1986 section 4***

## **2.10 Misleading signs and notices affecting Public Rights of Way**

Following a report of a misleading sign erected on a PRow, land managers will be notified of their obligations under Highways Act 1980 section 132 and National Parks and Access to the Countryside Act 1949 section 57. The County Council may request landowners to remove any misleading signs or notices, failure to do so may result in the County Council taking direct action and/or prosecution: all reasonable costs will be reclaimed when possible.

***Highways Act 1980 section 132 & National Parks and Access to the Countryside Act 1949 section 57, Road Traffic Regulation Act 1984 section 69***

## **2.11 Agricultural subsidies and Cross Compliance**

All offences of non-compliance of obligations under agricultural subsidies) will be reported to Rural Payments Agency.

***RPA & defra guidance***

## **2.12 Protection of Identity**

The names and addresses of members of the public who report obstructions and other difficulties confidentially will not be revealed without the prior consent of the person concerned unless the Council is required to do so by law.

**Where the County Council has a policy as outlined above it will consider in appropriate cases whether an exception should be made to it on its merits.**