



Llywodraeth Cymru  
Welsh Government

# Guidance

## Guidance for Local Authorities on Public Rights of Way

October 2016

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**GWT  
Countryside**

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## 1. Introduction

- 1.1. This advice and guidance sets out the Welsh Government's policy on public rights of way and its view of the law. It does not take the place of primary legislation, but seeks to give an overview of it within a policy context. It replaces:
- Welsh Office Circular 44/90 Rights of Way Act 1990.
  - Welsh Office Circular 45/90 Modifications to the Definitive Map: Wildlife and Countryside Act 1981.
  - Welsh Office Circular 5/93 Public Rights of Way.
  - Welsh Office Circular 6/93 Recovery of Costs of Public Path and Rail Crossing Orders.
  - Welsh Office Circular 47/96 Recovery of Costs for Public Path and Rail Crossing Orders Amendment Regulations.
  - Paragraphs 8 – 22 of National Assembly for Wales Circular 31/2001.
  - Statutory guidance under section 147 and 147ZA of the Highways Act 1980 relating to the requirement for local authorities to have regard to the needs of people with mobility problems when authorising stiles and gates, issued November 2006.
- 1.2. The information within this document is applicable only within Wales.
- 1.3. The document sets out advice to authorities on the following aspects of public rights of way:
- **Managing the Network:** the systems in place to ensure the effective management of public rights of way, and a discussion of the main management issues that arise in practice.
  - **Maintaining the Network:** the powers and duties of an authority to maintain the physical elements of the network and its associated structures.
  - **Protecting the Network:** the enforcement powers and duties of authorities to ensure the network remains available for public use.
  - **Recording the Network:** the means and processes through which the network is legally recorded.
  - **Changing the Network:** how the network can be changed through legal processes.
  - **Planning Permission and the Network:** how the network interacts with the development management process.
- 1.4. Our extensive network of public rights of way provides a major recreational resource and the opportunity to experience the immense variety of our landscape and the settlements within it. All parties - including authorities, landowners, path users and voluntary bodies - are therefore urged to work together to ensure that rights of way are legally defined, properly maintained, signposted and kept open for public use. Authorities should ensure they allocate sufficient resources to discharge their statutory duties in relation to public rights of way.

- 1.5. In many instances the use of public rights of way does not fit neatly into administrative boundaries, and authorities are encouraged to work collaboratively where this will enhance general enjoyment of the network. Rights of way staff are also encouraged to work closely with their colleagues in areas such as tourism and transportation to help maximise the benefits of their network for economic development and sustainable/active travel. By working closely with Welsh Government and organisations such as Natural Resources Wales, the benefits of our extensive and wide ranging public rights of way network can be felt throughout Wales.
- 1.6. Rights of way continue to serve their primary function of providing access for people within their local community, but for their full recreational potential to be realised it is desirable that they are managed by authorities as an integral part of the whole complex of recreational facilities within a given area.
- 1.7. Rights of way also play an important role in achieving the aims of the Active Travel (Wales) Act 2013 to enable more people to walk, cycle and generally travel by non-motorised transport. Significant potential exists for authorities to draw on and develop the rights of way network when discharging their duties to continuously improve facilities and routes for pedestrians and cyclists, and to prepare maps identifying current and potential future routes for their use. Additionally, it is important that routes are maintained and improved, where practicable, to ensure that obligations placed on authorities by the Equalities Act 2010 are met.

### **Further Information**

- 1.8. Throughout this guidance, references are made to other guidance and publications and, where these are available online, hyperlinks are provided. A list of additional sources of information is set out in Annex 2.
- 1.9. Authorities should also note that this guidance only sets out responsibilities specific to legislation regarding the management of public rights of way. In many instances, it may be necessary for authorities to consider other legislation when carrying out their duties, such as in relation to nature conservation or health and safety.

### **Local Authority Resourcing**

- 1.10. This document does not place any extra obligations on authorities and therefore has no implications in terms of additional manpower or increased expenditure. Funding for rights of way functions is provided through the revenue support grant. Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way, and that the rights of way network is in a fit condition for those who wish to use it.

## Statutes

- 1.11. All references to statutes in this document are to the versions currently in force, as amended. The relevant statutes are referenced in this document as follows:

<b>NPACA 1949</b>	National Parks and Access to the Countryside Act 1949
<b>CA 1968</b>	Countryside Act 1968
<b>HA 1980</b>	Highways Act 1980
<b>WCA 1981</b>	Wildlife and Countryside Act 1981
<b>RTA 1988</b>	Road Traffic Act 1988
<b>ROWA 1990</b>	Rights of Way Act 1990
<b>TCPA 1990</b>	Town and Country Planning Act 1990
<b>CROW 2000</b>	Countryside and Rights of Way Act 2000
<b>NERC 2006</b>	Natural Environment and Rural Communities Act 2006

## Responsible Bodies

- 1.12. Each of the Acts mentioned above refers to the relevant responsible body, for example the local highway authority, the local planning authority, the local authority, the surveying authority, the order making authority or traffic authority. As Wales has unitary authorities, these bodies are one and the same. As a result, this document refers only to the **authority**, meaning the unitary authority. The only exception to this is within our three National Park Authorities (NPAs). Where certain highways functions are delegated by agreement to a NPA it may take on responsibility for rights of way duties and powers within the park. NPAs are also the local planning authority.

## 2. Managing the Network

- 2.1. Managing the network involves a wide variety of tasks from programming improvements, maintaining records, providing information to the public and ensuring compliance with legal requirements.

### Rights Of Way Improvement Plans

- 2.2. Section 60 of the CROW 2000 places a duty on authorities to produce Rights of Ways Improvement Plans (ROWIPs). The Welsh Ministers expect ROWIPs to be the primary means by which authorities identify the changes to be made, in respect of management and improvement, to their local rights of way network in order to make better provision for users. Authorities should have regard to the guidance produced by the Welsh Government in respect of ROWIPs when preparing and reviewing their local document.

### Availability of Maps and Statements for Public Inspection

- 2.3. Definitive Maps and Statements are documentary records of public rights of way. They indicate where the public may lawfully walk, ride or drive. There is further information about the nature of Definitive Maps and Statements in the section '*Recording the Network*' below (para. 5.1-5.60).
- 2.4. Authorities must make copies of their Definitive Map and Statement and Modification Orders available for public inspection at one or more places to which the Map and Statement relate, usually at the offices of the authority or other places where the public can inspect them. Authorities should also, as far as practicable, deposit copies with community and town councils; these need only cover the area relevant to that community. Authorities are required to keep available for public inspection at least one copy of older editions of Maps and Statements, together with the Orders modifying them, and also to inform the public that copies of Definitive Maps and Statements and Orders are available for inspection.
- 2.5. Many authorities will keep 'working copies' of their map based on the Definitive Map, but which do not have the legally conclusive status of Definitive Maps. A working map may include additional information that the Definitive Map is not required to include, such as diverted routes for which Legal Event Modification Orders have not yet been made, or permissive routes. Authorities are also encouraged to make working maps available for public inspection, but such copies should clearly state their lack of legal status.

### Registers

- 2.6. Section 53B of the WCA 1981 requires authorities to keep a register of applications for Definitive Map Modification Orders. The statutory requirements for registers are set out in regulations - [The Public Rights of Way \(Registers\) \(Wales\) Regulations 2006](#) - but if authorities wish to record additional information, they are encouraged to do so.

- 2.7. Section 31A of the HA 1980 requires authorities to set up a register containing information with respect to declarations lodged and maps and statements deposited under s. 31(6) of the HA 1980. Such declarations and deposits enable landowners formally to acknowledge the rights of way across their land and, in doing so, make clear that they have no intention to dedicate any further routes across their land.
- 2.8. Section 121B of the HA 1980 requires registers to be kept for Public Path Orders for which a right of application exists under s. 118ZA, s. 118C, s. 119ZA and s. 119C of the HA 1980. However, these sections are not in force in Wales. Until they enter into force, the duty to keep a register under s. 121B is not triggered.

### Promoted Routes

- 2.9. Authorities may wish to develop promoted routes on a local and regional basis. This can also be done in partnership with others such as voluntary groups, and with the input of the Local Access Forum. Such routes can provide an excellent resource for members of the public by setting a start and finish point, as well as providing information about the route and amenities in the area, such as:
- Public toilets
  - Parking provision
  - Public transport
  - Which routes/sections are accessible to people with mobility problems
  - Levels of difficulty.
- 2.10. Information provided to the public should be clear with regard to the status of the routes so to avoid any ambiguity if a claim for a Definitive Map Modification Order affecting any part of it were made at some future point. This is particularly relevant where promoted routes do not have the same status for their entire length or where permissive sections are incorporated.
- 2.11. By its very nature a promoted route could lead to greater use of the public rights of way concerned. Careful consideration should be given to the suitability of the routes chosen and their ability to withstand increased traffic. Any improvement works needed should also be identified, including the need to meet any quality standards. Routes that duplicate or run parallel to existing promoted regional and long distance routes should be avoided to prevent confusion. Where routes run near to authority boundaries, the condition and coherence of routes between both authorities should also be considered.
- 2.12. Authorities should take careful account of the views of local people, including landowners, and should ensure, before undertaking publicity for, or endorsing, particular routes, that there is a clear commitment to future maintenance, having regard to the possible increase in use. There may also be a need to obtain planning permission for any additional facilities to be provided along well-used routes. Opportunity should be taken to promote understanding of

the countryside and environmental concerns where possible. Publicity can also be used to draw attention to any restrictions due to the operation of local byelaws and Traffic Regulation Orders.

- 2.13. The promotion of paths which pass over heavily used major roads or railways may result in increased numbers of people using these crossings, thereby increasing the risk of accidents. Authorities should therefore have regard to the potential threat to public safety when promoting such routes and take necessary steps to reduce the risk to the public in crossing roads. In the case of railway crossings, authorities should consult the Office of Rail and Road (ORR) and Network Rail who will advise on the safety implications of increased use. Further guidance on level crossing safety can be found in the ORR Guidance *'Document Level Crossings: a guide for managers, designers and operators'*.
- 2.14. When developing a brand for a promoted route, care should be taken to ensure that it is not misleading relative to accepted waymarking standards. The logo for the route should either incorporate arrows of the appropriate colour for the status of the path, be designed to sit alongside traditional waymarkers or incorporate a directional design that could not be misconstrued as being indicative of status. A good example of a branded path is the Wales Coast Path, where a combination of branded waymarker arrows are in use alongside standalone 'dragon shell' roundels.
- 2.15. When using route branding, care should be taken to ensure that it does not lead to excessive and unnecessary signage in the countryside or confusion. In particular, the recognised hierarchy of waymarking should be implemented, with branding for the Wales Coast Path and National Trails taking precedence over more locally promoted routes.

### Prioritisation Schemes

- 2.16. Authorities must ensure that they continuously review the Definitive Maps and Statements to keep them up to date by Order. Where a backlog of proposals for amending the Definitive Map has built up, authorities are urged to take appropriate action to make the necessary resources available to ensure that their Definitive Maps are brought up to date as soon as possible. It is also recommended that authorities should periodically publish a statement setting out their priorities for bringing and keeping the Definitive Map up to date as soon as reasonably practicable. Potential applicants should have regard to that statement when submitting their applications for Modification Orders.
- 2.17. After consulting with an authority, applicants have the right to ask the Welsh Ministers to direct that authority to reach a decision on a Definitive Map Modification Order application if no decision has been reached within twelve months of the authority receiving confirmation that notice of the application has been served on affected landowners and occupiers. In response to such a request, when considering whether to direct an authority to determine an application for an order within a specified period, the Welsh Ministers will take into account:

- any statements made by the authority setting out its priorities for bringing and keeping the Definitive Map up to date;
- the reasonableness of such priorities;
- any actions already taken by the authority or expressed intentions of further action on the application in question;
- the circumstances of the case and any views expressed by the applicant.

2.18. Authorities may also set out a prioritisation scheme for the management and improvement of their local network. This could form part of their ROWIP, and should be made available to members of the public to inform them how maintenance and enforcement requests to the authority will be dealt with. Where an authority publishes a prioritisation scheme to address maintenance or protection of the network, this may be taken into consideration by the court when deciding what would be a reasonable time for undertaking repairs in relation to applications made under s. 56 of HA 1980.

### **Local Access Forums**

- 2.19. Section 94 of the CROW 2000 places a duty on authorities to establish Local Access Forums to advise on public access to land for any lawful purpose and outdoor recreation, including public rights of way and the right of access to open country.
- 2.20. Membership of Local Access Forums should include a balance of users of rights of way and the right of access to open country, landowners and occupiers, together with any other interests especially relevant to the area. Local Access Forums should focus on those issues that are most relevant to their own area, considering issues at the strategic level, taking care to direct advice to the most appropriate recipients and adopting a proactive approach. Authorities must have regard to Forums' views in reaching decisions on access and public rights of way issues.

### **Informing Individuals and Other Groups**

- 2.21. To complement Local Access Forums' strategic role, authorities may wish to establish or maintain liaison groups that draw together the representatives of all interests in the rights of way network. In those areas where changes to the network are needed to ensure that it is better suited to the needs of users, liaison groups can play a valuable role in helping to define proposals which represent the best possible balance between all interests. The more detailed scrutiny that liaison groups can give to rights of way proposals is a valuable addition to the work of Local Access Forums. Local Access Forums may establish sub-groups to perform this type of function.

## Providing Information to the Public

- 2.22. Authorities should aim to provide the public with information on the full range of choices available for enjoying the rights of way network. All such information should be accessible, comprehensive and well promoted.
- 2.23. Authorities should tailor their publicity to local needs, opportunities and constraints, but imaginative schemes already in place in the country include: production of leaflets; offering guided walks and rides; organising or participating in festivals; use of mobile technology in the form of mobile phone apps and GPX routes; promoting the network in other areas of work such as schemes to support rural communities; and making information available on a website that shows the availability of public rights of way and their relationship to other areas of publicly accessible land. Publicity also provides an opportunity to promote understanding of the countryside and of environmental concerns.

## Wardens and Volunteers

- 2.24. Authorities have powers to appoint wardens, both within the countryside generally and, by virtue of s. 62 of the WCA 1981, to act on public rights of way. Wardens can advise members of the public on the use of rights of way. They can also help to guard against inconsiderate behaviour which can sour relationships between landowners and rights of way users.
- 2.25. When carrying out their duties to maintain public rights of way, authorities should make use of available help from landowners and voluntary groups. Voluntary groups can assist in a wide variety of activities such as route surveying, undertaking repairs and waymarking. Authorities utilising voluntary assistance should ensure that appropriate training is provided in areas such as the use of tools and health and safety, and that adequate supervision is given.

## Equality Act 2010

- 2.26. The Equality Act 2010 brings together various aspects of anti-discrimination legislation. It requires public sector bodies to be proactive in eliminating discrimination, in advancing equality of opportunity and in fostering good relationships between people with a disability and others. It widens the definition of disability: mobility difficulty, poor sight, learning difficulties, manual dexterity and certain long-term illnesses are all included within the Act.
- 2.27. Section 69 of the CROW 2000 amended s. 147 of the HA 1980, requiring authorities to have regard to the needs of people with mobility problems when authorising the erection of stiles, gates or other furniture on appropriate public rights of way. Authorities have particular powers under section 147ZA in this regard (see para 3.13-3.15).

- 2.28. Both s. 147 and s. 147ZA contain powers to impose conditions on the design and maintenance of structures. Authorities are advised that these powers can be used to require, for example, that a structure complies with BS 5709, as a minimum.

### **Needs of People with Mobility Problems**

- 2.29. Authorities should be aware of the latest best practice guides, including those produced by relevant user groups such as the Fairfield Trust and Pittcroft Trust. Such documents, together with the British Standard BS 5709 for gaps, gates and stiles, should provide authorities with enough information on how to assess the needs of people with mobility problems and to determine which routes should have priority for improved access for such people. Authorities should implement a Least Restrictive Access policy, seeking to minimise barriers when replacing and installing gates and stiles, in agreement with the landowner. Tackling physical barriers on rights of way is only one part of providing better access to the countryside for people with disabilities or mobility problems and consideration needs also to be given to publicity, parking and other relevant facilities.
- 2.30. When preparing their ROWIP, authorities should set out how the local rights of way network meets the current and future needs of local users, including blind people and people with mobility problems. Local Access Forums should endeavour to ensure that representatives from local disability groups are invited to sit as a member of the Forum. Further information can be found in ROWIP Guidance published by the Welsh Government.

### **Welsh Language (Wales) Measure 2011**

- 2.31. The Welsh Language (Wales) Measure 2011 is underpinned by three main principles:
- The Welsh language has official status in Wales.
  - In Wales, the Welsh language should be treated no less favourably than the English language.
  - The use of the Welsh language should be promoted and facilitated in Wales.
- 2.32. As a consequence of the Welsh Language Measure, authorities should ensure that they give Welsh an equal prominence with English. All official Orders and notices published (e.g. those in relation to Public Path Orders), and all promotional material should be bilingual, using text of the same size and prominence for both languages. Where appropriate, commonly-used symbols may be used on signage instead of language.

### **Nature Conservation**

- 2.33. Section 6 of the Environment (Wales) Act 2016 places a duty on public authorities (including Local Authorities) to 'seek to maintain and enhance biodiversity' so far as it is consistent with the proper exercise of those

functions. In so doing, public authorities must also seek to ‘promote the resilience of ecosystems’.

- 2.34. The Local Authority should refer to the Welsh Government guidance in relation to the Biodiversity and Resilience of Ecosystems Duty as well as any internal guidance. In the absence of such guidance contact the LA ecologist (or independent ecologist where one is not in place) for further advice.
- 2.35. All wild birds and certain other animals and plants are given legal protection under Part I of the WCA 1981. Before undertaking works authorities should consider whether the proposed action is likely to affect a protected animal or plant species. The level of protection differs according to individual species needs. Advice on individual species should be sought from the authority’s in-house ecologists where available or appropriate external experts. Natural Resources Wales (NRW) can grant licences to allow certain work to be carried out which would otherwise be unlawful. Authorities can seek advice from NRW on the need for a licence.
- 2.36. Extra protection is given to animal and plant species of European importance (European Protected Species - EPS) through the Conservation of Habitats and Species Regulations 2010 (the ‘Habitats Regulations’). Before undertaking any work it is necessary for authorities to consider the implications of the proposed action on any EPS. Authorities can obtain an EPS licence from NRW to avoid breaking the law.
- 2.37. Badgers and their setts are protected separately under the Protection of Badgers Act 1992. Licences for works that might affect badgers may be obtained from NRW or Welsh Government depending on the purpose of the activity being proposed.
- 2.38. Part II of the WCA 1981 relates to the designation of protected areas, including Sites of Special Scientific Interest (SSSIs) and National Parks. There are over 1000 SSSIs in Wales, each being protected by law from damage through development or unsuitable management or other activities.
- 2.39. Local Authorities and other public bodies are considered to be ‘Section 28G authorities’ for the purposes of the WCA 1981. As such, authorities have a duty to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.
- 2.40. As a ‘section 28G authority’ local authorities are also required, under section 28H and 28I of the WCA 1981, to; notify NRW before carrying out any work likely to damage any of the features by reason of which a SSSI has been notified and; notify NRW before granting any permission for activities likely to damage the features of a SSSI. These duties apply even where the operation is not within the SSSI, but may detrimentally affect it. These operations may include those activities normally associated with the creation or routine maintenance of highways. Authorities are therefore advised to consult

informally with Natural Resources Wales before carrying out any operation in or near an SSSI, including path maintenance.

- 2.41. Authorities must also consider whether sites are designated for any other nature conservation purpose under domestic legislation or as European or International sites (e.g.: NNRs, SACs, SPAs, Ramsar sites). Authorities must consider their obligations under Part 6 of the Habitats Regulations in relation to undertaking or permitting work for a plan or project that is likely to have a significant effect on a European site in view of the site's conservation objectives.
- 2.42. The requirement to have regard to the purposes for which a National Park or Area of Outstanding National Beauty was created (s. 11A(2), NPACA 1949; s. 85, CROW 2000) will apply to an authority when carrying out duties to manage and maintain the public rights of way for which they are responsible.

### **Invasive Non-Native Species and Injurious Weeds**

- 2.43. The control of invasive non-native species is principally dealt with under the WCA 1981, Environmental Protection Act 1990, the CROW 2000 and NERC 2006 Invasive Alien Species Regulation (EC 1143/2014) and Environment (Wales) Act 2016. When undertaking maintenance of the network, work should be planned to ensure that invasive non-native species, such as (but not exclusively) Giant Hogweed, Himalayan Balsam and Japanese knotweed, are not allowed to spread and the appropriate disposal of 'controlled waste' is carried out. Attention needs to be given to carrying out the operation safely as plants (e.g. Giant Hogweed) and products used can be toxic. Further details relating to invasive non-native species can be found at [www.nonnativespecies.org](http://www.nonnativespecies.org) and <http://gov.wales/topics/environmentcountryside/farmingandcountryside/plantsspecies/?lang=en>
- 2.44. Similar attention should be paid to injurious weeds such as (but not exclusively) Common Ragwort and Broad-leaved Dock, ensuring they are disposed of appropriately and not allowed to spread onto neighbouring land. Further information on how to prevent and control the spread of ragwort: <http://gov.wales/topics/environmentcountryside/farmingandcountryside/plantsspecies/injweeds/?lang=en>
- 2.45. Authority staff or contractors should also take into account the guidance provided on the use of pesticides near public rights of way and other publically accessible outdoor spaces. The guidance can be found at: <http://www.hse.gov.uk/agriculture/topics/pesticides.htm>

### **Scheduled Monuments**

- 2.46. Scheduled monuments are nationally important monuments that are afforded statutory protection under the Ancient Monuments and Archaeological Areas Act 1979 and the Historic Environment (Wales) Act 2016. The aim of the

protection is to avoid any damage or significant alteration to the monument and its setting. The extent of any such monument is depicted on a plan known as the scheduled area.

- 2.47. Cadw should be consulted prior to undertaking any work to a public right of way within a scheduled monument. Scheduled monument consent is required from the Welsh Ministers, via application to Cadw, before any works are carried out within the scheduled area that could cause damage to the scheduled monument. It is a criminal offence to do otherwise and the types of works that require such consent include ordinary maintenance activities such as digging post holes, installing new furniture, and tipping materials onto a surface. Proposals should be considered in light of published guidance on the Conservation Principles for the Sustainable Management of the Historic Environment in Wales. Further information is available from the [Cadw website](#).
- 2.48. Cadw should also be consulted prior to undertaking any works to a public right of way within a registered historic park and garden.

### **3. Maintaining the Network**

- 3.1. Most public rights of way are maintainable at public expense and, where this is the case, authorities have a duty to maintain them. Authorities may also maintain public rights of way that are not publicly maintainable.
- 3.2. Under s. 43 of the HA 1980, community or town councils can maintain footpaths, bridleways and restricted byways in their area which are maintainable at public expense without the prior consent or agreement of the authority, although it is strongly advised that agreement is sought before work is undertaken. However, maintenance by community councils does not absolve authorities from discharging their own responsibilities. Under s. 50 of the HA 1980, authorities, community or town councils can maintain footpaths and bridleways not maintainable at public expense without prejudice to the responsible owners' rights and duties.

#### **Standards of Maintenance**

- 3.3. It is not considered practicable to recommend specific standards for the maintenance or restoration of particular kinds of public rights of way. However, maintenance should be such that ways are capable of supporting the use that is made of them by ordinary traffic at all times of the year. In some cases, this might require the importation and application of suitable hard materials. Maintenance need not conform to an arbitrary standard of construction or appearance, but should instead harmonise with the general appearance and character of the surroundings or adhere to any restrictions that may apply, for example as a result of SSSI status.

#### **Structures**

##### **Bridges**

- 3.4. Sections 91 and 92 of the HA 1980 allow for the construction and reconstruction of bridges forming part of a public right of way. A bridge may be reconstructed either on the same site or on a new site within 200 yards of the old one. Should a bridge be moved to a new site within the 200 yard limit the power extends to the highway that gives access to the bridge and this can be reconstructed along with the bridge without the need for a diversion Order. However, under the Flood Risk Regulations 2009 and the Flood and Water Management Act 2010, flood defence consent is required from Natural Resources Wales prior to any work in, over, under or near a main river. Where a bridge is to be constructed over any other form of water course (including ditches, drains, cuts, dikes, sewers other than public sewers, and passages through which water flows) ordinary watercourse consent is required from the lead local flood authority, normally the unitary authority.

## Gates and Stiles

- 3.5. Gates, stiles, and other structures on a public right of way are unlawful obstructions unless:
- They are recorded on the definitive statement as a limitation, or
  - It can be shown that the way was dedicated with such a structure despite not being recorded on the definitive statement (i.e. the statement requires updating), or
  - They have been authorised by the authority under s. 147 of the HA 1980, or
  - They have been authorised under any other relevant legislation.
- 3.6. Unless dedicated with a limitation of a gate, restricted byways and byways open to all traffic may not have such a structure placed across them. Section 145 of the HA 1980 specifies that a minimum width of 5 feet (1.5 metres) must be provided for a gate across a bridleway and a minimum of 10 feet (3 metres) for a gate on a highway comprising a carriageway (i.e. one where the public have a right of way for the passage of vehicles). In the case of bridleway gates dedicated subject to BS 5709 standards, those gates should be useable whilst the horse rider is mounted.

## Liabilities to Maintain

- 3.7. Under s. 146(1) of the HA 1980, landowners are responsible for maintaining gates, stiles and similar structures across footpaths, bridleways or restricted byways, whether or not they are shown on the definitive map. Authorities must contribute not less than a quarter of the expenses reasonably incurred where landowners undertake works to such a structure. These responsibilities apply unless a specific agreement or condition to the contrary has been concluded in writing between the authority and the landowner, such as where the structure has been authorised subject to conditions under s. 147 of the HA 1980. Where it appears to an authority that the landowner is not complying with their statutory duty, the authority may give notice of their intention to take the necessary steps for repairing and making good the stile, gate or other works. The authority may recover the expenses reasonably incurred doing so from the landowner.
- 3.8. Where authorities make arrangements to carry out work to maintain structures themselves, they should be clear in their dealings with the landowner that the work is undertaken on the landowner's behalf.

## Authorising New Structures - Section 147

- 3.9. Section 147 gives competent authorities power to authorise the erection on a footpath or bridleway (but not on a restricted byway or byway open to all traffic or cycle track) a stile, gate or other structure which prevents the ingress or egress of animals. The authority can act only on a representation from the owner, lessee or occupier of the land. The power applies only to footpaths and bridleways which cross land which is used, or is being brought into use,

for agriculture (as defined in s. 329 of the HA 1980), forestry, or the breeding or keeping of horses. Any authorisation granted under s. 147 does not permit any interference with private rights of access or the rights of statutory undertakers.

- 3.10. An authority may, if it decides to grant an authorisation, impose conditions for maintenance and for ensuring that the right of way can be used without undue inconvenience to the public. Other powers are also available under s. 66(3) of the HA 1980 for authorities to provide and maintain on a footpath or bridleway, such barriers, posts, rails or fences as they think necessary for the purpose of safeguarding persons using the highway.
- 3.11. Before authorising a new barrier under s. 147, authorities should be satisfied on three counts:
- That the land is being used, or is being brought into use, for agriculture, forestry or for the breeding or keeping of horses.
  - That, in order for that use to be carried on efficiently, it is expedient for a structure to be erected on the path or way that crosses the land to prevent the ingress or egress of animals.
  - That the barrier being authorised is the least restrictive barrier that is consistent with the need to contain or exclude animals.
- 3.12. Where the reasons for authorising the barrier no longer permanently apply, the authorisation should be revoked and the barrier removed.

### **Improving Structures - Section 147ZA**

- 3.13. Section 69 of the CROW 2000 also introduced a new s147ZA to the HA 1980, giving authorities powers to enter into agreements with landowners, lessees or occupiers of land to undertake work on a structure which is on a footpath or bridleway in order to replace it with a new or improved structure which will be safer or more convenient for persons with mobility problems.
- 3.14. Authorities should note the following:
- It provides a power only to enter into an agreement. Authorities may not enter into an agreement except with the consent of every owner, lessee or occupier of the land on which the relevant structure is situated. There are powers, similar to those in s. 147, to impose conditions, including conditions for future maintenance.
  - The power to enter into an agreement is limited to structures which are “relevant structures”. These are structures which are lawful, and it is for authorities to satisfy themselves that a structure that is subject of a proposed agreement is a “relevant structure”. Any structure across a footpath or bridleway which is not a “relevant structure” can be dealt with by the authority under s. 130 and s. 143 of the HA 1980 as an obstruction. In some circumstances, authorisation by the authority of a replacement structure under s. 147 may provide a solution.
  - A s. 147ZA agreement can cover more than one structure.

- Authorities should ensure that the improved or replacement structure is the least restrictive barrier that is consistent with any need to contain or exclude animals. Authorities should note that the power to enter into agreements does not extend to removal of structures without replacement. *Note:* In this case a gap conforming to BS 5709 or similar could count as a structure if the circumstances of any particular case suggest it can do so.
  - The power to enter into agreements envisages that works will follow, so the power cannot be used to enter into agreements to authorise retrospectively works that have already been carried out.
- 3.15. Notwithstanding the powers available under s. 147ZA, authorities should also have regard to their responsibilities under the Equalities Act 2010. A model s. 147ZA agreement is attached in Annex 3. Authorities should keep records of authorisations under s. 147 and s. 147ZA and are encouraged to make these available for public inspection alongside the definitive map and statement. More detail regarding this requirement can be found in paragraph 5.22.

## Surfaces

- 3.16. Section 263 of the HA 1980 vests the surfaces of highways maintainable at public expense in the highway authority. Authorities are therefore able to act as if they were owners of surfaces of public rights of way, to an extent sufficient to control, protect and maintain the way for use by the public.
- 3.17. The authority is required to ensure that ways are capable of accommodating the use that is made of them by ordinary traffic at all times of the year. This means that work must be undertaken to ensure the route is safe and fit for ordinary traffic, as appropriate to its status. This includes cutting back any surface vegetation as required.
- 3.18. Authorities have specific powers to improve the surfaces of highways. These powers extend to:
- Levelling.
  - Reconstructing bridges.
  - Replacing fords or stepping stones with bridges.
  - Planting and laying out verges.
  - Metalling.
  - Improving drainage.
  - Treating the highway to mitigate dust.
  - Providing cattle grids.
  - Protecting against hazards of nature.
  - Carrying out works or placing structures for the purposes of enhancing amenity or providing a public service.
- 3.19. In addition, authorities have a general power of improvement under s. 62 of the HA 1980 that can be relied on in circumstances where specific powers are not applicable. However, improvements should ensure that the route remains usable as dedicated.

## Signage

### Road Side Posts

- 3.20. Section 27 of the CA 1968 requires authorities to signpost footpaths, bridleways, restricted byways and byways open to all traffic where they leave metalled roads. A road is taken to be any highway and any other road to which the public has access; a metalled road therefore includes any right of way with improved hard surfaces (such as tarmac). Authorities need not erect signposts at the junction of a way with a metalled road where the town or community council has been consulted and agrees that it is not necessary.
- 3.21. It is an offence under s. 131(2) of the HA 1980 to remove or obliterate a traffic sign that complies with the Traffic Signs Manual without authorisation.

### Waymarking

- 3.22. The term “signpost” also includes other signs such as a painted waymark. Signposting and waymarking of public rights of way are of considerable benefit to path users and also assist landowners by helping to prevent trespass. Authorities must also ensure that members of the public are provided with sufficient information, by means of appropriate signs or notices, particularly at path junctions, to enable them to use the local rights of way network. This is especially important where paths have been altered by means of statutory Orders since the most recent version of publicly available maps, such as Ordnance Survey, was published.
- 3.23. The owner or occupier of the land crossed by a right of way must always be consulted before any sign is erected, although consent is not required as a landowner cannot refuse to allow waymarking. Landowner consent must, however, be obtained if the sign is to be attached to his or her property, such as a fencepost or stile. In the majority of cases, a signpost at the point where a right of way leaves a metalled road will be installed in a roadside verge or footway that is in the ownership of the authority and therefore most of the cases where the duty to obtain consent will apply are those where waymarks are installed to guide the public along the correct route.
- 3.24. The recommended system in Wales for waymarking public rights of way uses small coloured arrows to show the direction of the path and also to act as a target when viewed from a distance. A different colour is used for each category of public right of way, intended only to show the status of the route and not to indicate whether it is physically suitable:
- Footpaths are waymarked using yellow arrows (BS 08 E 51).
  - Bridleways are waymarked with blue arrows (BS 20 E 51).
  - Restricted byways are waymarked with purple (plum) arrows (BS 02 C 39).
  - Byways open to all traffic are waymarked with red arrows (BS 06 E 55, approximate).

## Gaining Access to Undertake Work<sup>1</sup>

### Powers of Entry for the Purposes of Survey

- 3.25. Section 289 of the HA 1980 provides that a person duly authorised in writing by an authority may at any reasonable time enter onto any land for the purposes of surveying that or any other land in connection with the exercise of their highway authority functions. This does not overtly include functions of the surveying authority in connection with its duties under the WCA 1981. In relation to the WCA 1981 duty to keep the Definitive Map and Statement under continuous review, it has been suggested that the need to access land (for example, for the purposes of surveying for an Order) would be covered by the general duty on the highway authority to "*assert and protect the rights of the public to the use and enjoyment of the highway*" under s. 130 of the HA 1980 and that therefore the powers to access land for the purposes of survey in the HA 1980 cover access required for surveys in relation to the WCA 1981. However, this contention has not been tested in the Courts.
- 3.26. The powers in s. 289 are supplemented by the provisions of s. 290, and the two sections need to be read together. Section 292(4) makes it an offence to wilfully obstruct a person acting in exercise of a power under s289.

### Power of Entry for the Purpose of Maintaining Certain Structures and Works

- 3.27. Where an authority has the power or right to maintain, alter or remove any structure or work on, over or under land that neither belongs to the authority, nor forms part of a highway for which they are the highway authority, powers of entry are contained in s. 291 of the HA 1980. Subsections (1), (2) and (3) of s. 290 also apply to s. 291. In relation to s. 291, "structure" includes a bridge, fence, barrier or post and "work" includes tunnel, ditch, gutter, watercourse, culvert, drain, soakaway or pipe. Section 292(4) makes it an offence to wilfully obstruct a person acting in exercise of a power under s291.

### Powers of Entry for Purposes Connected to Certain Orders Relating to Footpaths and Bridleways

- 3.28. Section 293 of the HA 1980 contains powers additional to those in s. 289 to enter onto land for the purpose of surveying or valuing it in connection with the making of Public Path Orders. In addition to granting these powers of entry to authorities, there is specific authorisation for officers of the Valuation Office to enter land for the purposes of valuation. Again it should be noted that these powers of entry do not cover Orders made under the WCA 1981.

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<sup>1</sup> The text in this section is based on text from the IPROW - Public Rights of Way Good Practice Guide (GPG). GPG is not a complete statement of the law or its interpretation and the latter is ultimately for the courts to decide.

## Powers of Entry of Premises

- 3.29. Section 294 of the HA 1980 allows the authority to apply to the Magistrates' Court for an order authorising the authority (by any authorised officer) to enter, examine and "lay open" the premises for the purposes of:
- Surveying.
  - Making plans.
  - Executing, maintaining or examining works.
  - Ascertaining the course of sewers or drains.
  - Ascertaining or fixing boundaries.
  - Ascertaining whether any hedge, tree or shrub is dead, diseased, damaged or insecurely rooted.
- 3.30. In addition to these specific matters, Schedule 22 applies the provisions of s. 294 to a large number of other sections of the HA 1980. Potentially the most useful of these for rights of way officers are:
- Section 36(6) and (7) (duty to keep the list of streets).
  - Section 38 (adoption of highway by agreement).
  - Section 154(1) and (4) (the cutting back of trees and overhanging branches).
  - Section 163 (the prevention of water falling on or flowing onto a highway).
  - Section 165 (dangerous land adjoining street).

## Access with Vehicles

- 3.31. Section 300(1) of the HA 1980 provides that:

*"No statutory provision prohibiting or restricting the use of footpaths, footways, bridleways or restricted byways shall affect the use by a competent authority of appliances or vehicles, whether mechanically operated or propelled or not, for cleansing, maintaining or improving footpaths, footways, bridleways or restricted byways or their verges for preventing or removing obstructions to them or otherwise preventing or abating nuisances or other interferences with them, or for maintaining or altering structures or other works situated therein."*

- 3.32. The Vehicles (Conditions of Use on Footpaths) Regulations 1963 apply to the use by the authority of appliances or vehicles on rights of way. In particular it should be noted that the speed of any vehicle or appliance is limited to 5 mph. The regulations were amended in 1966 to make specific provision for the crossing of gas pipelines by vehicles. Where a right of way crosses a rail track, additional restrictions may apply and authorities should ensure they comply with all relevant legislation in this regard.
- 3.33. Although s. 300 of the HA 1980 is titled *"Right of local authorities to use vehicles and appliances on footways, bridleways and restricted byways"* it is not clear how any such right is to be enforced and the section is silent about

how authorities deal with matters such as access along rights of way where the legally recorded width is too narrow to permit the passage of vehicles or where the right of way is subject to limitations such as stiles or gates that would have to be removed to allow vehicles or appliances to pass. Section 300 does not allow for vehicles to be used on land that is not a public right of way, nor does it provide for compensation to be payable for any damage to land or structures.

- 3.34. Section 290(2), which applies to s. 289 and s. 291, gives authorised persons the power to take with them onto land *"such other persons and such other vehicles and equipment, as he may consider necessary"*. Section 289 relates to surveying. Section 291 gives the right of entry over land if necessary to exercise the power or right to maintain, alter or remove any structure, if the land neither belongs to the authority nor forms part of a highway for which they are responsible,. The legislation does not provide for a mechanism for the authority to force entry with vehicles along a footpath or bridleway.
- 3.35. Schedule 12A, paragraph 7 of the HA 1980 gives authority for any person duly authorised in writing to enter on land taking with him *"vehicles, machinery and other equipment as may be requisite"*. The Schedule 12A powers for access are in connection with works to reinstate paths where there has been unauthorised disturbance to the surface. Notice must be given in writing. The powers of access are for entry onto relevant land and include access to land reasonably believed by the authority to be in the same ownership.
- 3.36. Although again there is no obvious means of forcing a landowner to allow access, the Schedule 12A powers do seem to provide for access to land other than via the line of the right of way.

### **Improving Access for Maintenance Vehicles in the Future**

- 3.37. When authorising new gates or stiles under s. 147 of the HA 1980 (para 3.9-3.12 above) on a path that is suitable and of sufficient width to allow vehicular access, the authority may wish to consider including a condition to require the landowner to remove and replace that structure should the authority require later access.

### **Access for Signposting and Waymarking**

- 3.38. Section 71 of the Road Traffic Regulation Act 1984 empowers the authority to *"enter any land and exercise such other powers as may be necessary for the purpose of the exercise and performance of their powers and duties of placing, replacing, converting and removing traffic signs"*. For the purposes of s. 71, "traffic signs" includes signposts for footpaths and bridleways and "signposts" includes other notices or signs for the same purpose. Any authority making a Traffic Regulation Order under the Road Traffic Regulation Act 1984 is also empowered under s. 71 to enter land.

### **Other Powers of Access**

- 3.39. Section 40(2) of the CROW 2000 provides that a person authorised by the authority may enter land for the purpose of certain activities in connection with

sections 35-37, for ascertaining whether or not an offence is being committed under s. 14 or s. 39 or for the purposes of erecting notices under s. 19(1). Any person exercising these rights of access may use a vehicle to enter the land. Notice requirements apply to occupied land other than access land and there is no right to enter dwellings.

- 3.40. Section 324 of the TCPA 1990 contains access powers in relation to certain planning functions, but these do not extend directly to the powers to make Public Path Orders under the same Act.

## 4. Protecting the Network

- 4.1. Members of the public are entitled to expect that all rights of way will be kept open and available for use. The integrity of the network depends on the cooperation of landowners, occupiers and lessees in discharging their legal duties to ensure paths are clear of obstructions and hazards. In the most part, there is compliance with these duties and the public are able to use the network with ease. However, where this is not the case, authorities have a range of duties and powers to ensure that any problems can be resolved.

### Enforcement Methods

- 4.2. Sometimes, it is necessary for authorities to investigate alleged breaches of the law and take action where offences are found to have been committed. Often, an investigation will be triggered by a complaint. As part the investigation, an inspection of the site in question should be made unless the site has already been subject to a recent inspection, or an inspection is not likely to be of assistance owing to the nature of the offence (e.g. threatening behaviour to users of a public path).
- 4.3. In investigating the alleged offence, authorities may wish to consider:
- Whether sufficient evidence exists to show an offence is being committed or may have been committed.
  - The powers available to the authority to deal with the offence.
  - Whether the offence is a repeat of an offence that has been dealt with previously through enforcement procedures.
  - Whether the offence involves the erection of permanent structures or developments.
  - Whether the offence is a recent occurrence or has been going on for a substantial length of time before it was identified.
  - Whether enforcement action would be proportionate in the circumstances.
  - The terms of any other policy in place within that authority, including the principles contained within the Concordat for Good Enforcement, where relevant.
- 4.4. The options available to authorities following investigation of such complaints will usually be:
- No enforcement action.
  - Informal enforcement action.
  - Service of a notice and/or direct action with recovery of costs.
  - Simple Caution.
  - Prosecution.

### No Enforcement Action

- 4.5. It may be concluded that an offence has not been committed or that the issue could be resolved other than by enforcement action. In these circumstances,

no further action is required, though authorities may wish to advise complainants and alleged offenders, where necessary, of the outcome.

### Informal Advice

- 4.6. Where problems identified are of a minor nature and an authority is confident that corrective action will be taken by the alleged offender, it may seek to address the problem by giving informal advice. In such circumstances, an authority might wish to agree a reasonable timescale for corrective works after which more formal enforcement methods will be considered.

### Service of Notice and Direct Action

- 4.7. Where provision is made in the relevant statute, authorities may serve statutory notices which require a person, business or organisation to comply with specific requirements.
- 4.8. Where a formal notice is served, the method of appealing against the notice, if any, should be explained in writing at the same time. The notice should explain what is wrong, what is required to put things right and what will happen if the notice is not complied with.
- 4.9. In general, failure to comply with a properly written and served statutory notice will make the recipient liable to prosecution. In some cases, authorities are able to carry out direct works in default of a failure to comply with the notice and recover the cost of doing so from the recipient of the notice. In certain circumstances, it is possible to prosecute in conjunction with service of a notice.
- 4.10. Often, specific provision is made within a statute for the form that a notice must take, and how it must be served. For notices issued under the HA 1980, sections 320 and 322 apply.
- 4.11. Authorities may also use common law powers to remove an obstruction or otherwise legally abate a nuisance on the highway without prior notice.

### Simple Caution

- 4.12. Previously known as a formal caution, simple cautions may be given in circumstances where offences have been investigated and evidence of guilt sufficient to give a realistic prospect of successful prosecution has been established. Simple cautions require the offender to admit guilt by signature of a declaration. The suspected offender must understand the significance of a simple caution and give an informed consent to the caution.
- 4.13. Authorities should follow the procedures described in Ministry of Justice [guidance](#) when issuing a simple caution.
- 4.14. The aims of simple cautions are to:
- Deal quickly and simply with less serious offenders.

- Avoid unnecessary appearances in a criminal court.
- Reduce the likelihood of offenders re-offending.

4.15. A record of a caution that has been accepted should be kept on file, and may be referred to if a prosecution is brought at a later date for a further offence.

### Prosecution

4.16. Where an offence is serious in nature, authorities may elect to bring about a prosecution. It is anticipated that authorities will have their own protocols for prosecution and officers should therefore consult with their own legal advisers at an early stage.

4.17. At a minimum, the investigation of an offence relating to public rights of way is likely to generate a statement by an officer confirming the existence of the relevant public right of way by reference to the Definitive Map and Statement, and a description of the allegation which has been investigated.

### Animals

4.18. The Health and Safety at Work Act 1974 creates obligations not to put at risk the health and safety of third parties. In addition, under certain circumstances, the keeper of any animal may be liable, under s. 2(2) of the Animals Act 1971, for damage caused by that animal. For example, the keeper of an animal is liable for damage, including injury caused, if they were aware of the animal's likelihood to cause injury.

4.19. If a farmer, or any landowner and occupier, were to keep any animal that they knew to have a likelihood of causing injury in a field crossed by a public right of way and a user was injured as a result, then they would be liable for prosecution under the Health and Safety at Work Act 1974, and could also be sued for damages by the user under the Animals Act 1971.

4.20. In general, therefore, no offence is committed simply by keeping animals on land crossed by public rights of way, but a liability may arise should an incident occur. Where authorities are alerted to incidents involving animals they may wish to proceed by contacting the relevant landowner to remind them of that liability and, where possible, agree any measures that could be undertaken to help to mitigate the risk.

### Cattle, including Bulls

4.21. It is an offence under s. 59 of the WCA 1981 for an occupier to permit a bull to be at large in a field or enclosure crossed by a public right of way except where:

- The bull does not exceed the age of 10 months; or
- The bull is not a recognised dairy breed and is accompanied by cows or heifers.

- 4.22. The recognised dairy breeds are: Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry. However, even for bulls that are excluded from the offence in s. 59, farmers' obligations under the Health and Safety at Work Act 1974 still apply.
- 4.23. A Health and Safety Executive (HSE) study reported that most of the incidents on rights of way involving cattle arise when suckler cows and calves are at large in fields. The HSE have summarised their findings and provided guidance for the public and for farmers in [Agriculture Information Sheet No 17EW\(rev1\)](#). The guidance also includes useful information as to the form and contents of signs that could be used to indicate the presence of animals.

### Dogs

- 4.24. A dog impeding the free use of a public right of way by behaving in a threatening manner and frightening users is a public nuisance under common law. It may also be an offence under s. 137 of the HA 1980 because it constitutes an obstruction to the highway. In dealing with such occurrences, authorities may also consider the powers available to them under the Anti-social Behaviour, Crime and Policing Act 2014 in relation to irresponsible dog ownership. Further details can be found in the [Dealing with Irresponsible Dog Ownership Practitioners Manual](#).
- 4.25. Dogs commonly accompany users of public rights of way, but there is no requirement to make specific provision for them, such as by erecting dog stiles or specialist outdoor furniture, but given that some dogs are also guide dogs, authorities should also consider their obligations under the Equalities Act 2010 and consider whether any unnecessary obstruction to the use of public rights of way by dogs could be removed. There is no requirement in law for a dog to be on a lead but they should be kept under effective control at all times. Clear and concise advice can be found in the [Dog Walking Code](#). A path user who allows a dog to wander off the right of way becomes a trespasser.

### Horses

- 4.26. As stated above, farmers and landowners/occupiers should have regard to s. 2 of the Animals Act 1971 when considering keeping any animal in a field crossed by the public right of way, including horses. This section of the Act also applies to the keeper of any horse who injures anyone lawfully using a bridleway such as a walker, provided the keeper knew the horse was likely to cause such injury.

### Dangerous Species

- 4.27. The Dangerous Wild Animals Act 1976 states that *"no person shall keep any dangerous wild animal except under the authority of a licence granted in accordance with the provisions of the Act by a local authority"*. A full list of the species covered can be found in the Act. However, for the purposes of agriculture, it should be noted that the list includes wild boar and ostrich. The Act requires such animals approved by licence to be kept in secure

accommodation and not to be in contact with members of the public. Consequently, no such animal should be kept on or near a public right of way.

## Obstruction

- 4.28. Under s. 130(1) of the HA 1980, authorities are under a duty to assert and protect the rights of the public to use and enjoy those public rights of way for which they are responsible. They are also under a duty under s. 130(3) of the HA 1980 to prevent, as far as possible, the stopping-up or obstruction of those public rights of way for which they are responsible. Authorities are also under a duty to prevent, as far as possible, the stopping-up or obstruction of those highways for which they are not responsible, if they consider that it is prejudicial to the interests of their area. The Act empowers authorities to start legal proceedings or take whatever steps they deem expedient to discharge these duties.
- 4.29. In addition, authorities are required under s. 130(6) of the HA 1980 to take proper proceedings whenever they receive representations from a community or town council that a way has been obstructed or stopped-up, or that unlawful encroachment onto roadside waste has taken place.
- 4.30. The public are entitled to expect that all rights of way will be kept open and available for use and it is important that authorities act quickly to investigate any complaint made to them. Authorities should ensure that any obstructions they discover or have reported to them are removed as soon as is reasonably practicable. Section 143 of the HA 1980 enables authorities to secure the removal of structures on the highway by serving notice on the person responsible and by removing the obstruction themselves at the person's expense should that person fail to comply with the notice. Section 149 of the HA 1980 also enables an authority to have any "thing" deposited on a highway, which constitutes a nuisance or danger to users, removed.
- 4.31. In dealing with obstructions, authorities should be aware that information recorded in the Definitive Statement about the position or width of a right of way, or of the limitations or conditions that are relevant to it, is conclusive evidence of those matters. Where there are legitimate limitations, information should be recorded in the Definitive Statement describing the effect that they have in restricting the use of the way by those who are lawfully entitled to use it. Where the information recorded is not about position or width, or is not relevant to limitations or conditions, authorities should examine the evidence in each instance to resolve any inconsistency and make any necessary modifications to the Definitive Map and Statement in line with the duties imposed by s. 53(2) of the WCA 1981.
- 4.32. Evidence may be available to suggest that a public right of way shown on the Definitive Map does not exist. However, the Map is conclusive as to the public rights of way shown to exist on it (without prejudice to the existence of other rights – see s. 56(1) of the WCA 1981) and the path or way must remain open and available for use until the Definitive Map has been amended, or closure procedures have been complied with.

### **Wilful Obstruction of a Highway**

- 4.33. Under s. 137ZA of the HA 1980, when convicting a person under s. 137 of that Act of wilfully obstructing a highway, the Magistrates' Court can order that person to remove the obstruction. A person who has been ordered to remove an obstruction cannot be prosecuted again under s. 137 in respect of that obstruction during the period for removing it set by the court under s. 137ZA. Nor can a person be prosecuted during any period for complying with directions set by the court under s. 311(1) of the HA 1980.
- 4.34. Where authorities choose to exercise any of their powers to remove an unlawful obstruction after a person has been convicted under s. 137ZA(3), s. 137ZA(4), in conjunction with s. 305 of the HA 1980, allows authorities to recover expenses reasonably incurred in doing so.

### **Keeping Ways Clear of Overhanging Vegetation**

- 4.35. Section 154(1) of the HA 1980 enables authorities to require owners and occupiers of land whose trees, shrubs or hedges overhang highways to the extent of endangering or obstructing the passage of vehicles, pedestrians or horse-riders, to cut the vegetation back. These provisions also apply to roads and footpaths that are not highways but to which the public has access, e.g. paths laid within public open space.
- 4.36. Authorities may serve notice on land owners or occupiers to remove hedges, trees or shrubs likely to obstruct, endanger or cause danger by falling to users. If the issue is not remedied within the 14 day notice period, the authority may cut back the vegetation or remove dangerous trees and shrubs itself and recover the expenses reasonably incurred in doing so from the person in default. Section 65 of the CROW 2000 extends s. 154 to apply to vegetation which endangers or obstructs the passage of horse-riders allowing for vegetation overhanging bridleways or carriageways to be cut back to a suitable height.

### **Corporate Responsibility**

- 4.37. The Highways (Obstruction by Body Corporate) Act 2004 addressed concerns that obligations to prevent the obstruction of highways could be prevented by setting up a company to hold the land over which a right of way runs. The 2004 Act amended the HA 1980 to apply s. 314 of that Act (which enables criminal proceedings against officers or members of a body corporate) to s. 137 and s. 137ZA to ensure that directors and other officers of a company, as well as the body corporate, can be convicted of obstruction offences, and be subject to fines (and a court order to remove the obstruction in the case of s. 137ZA), where they are culpable.

### **Serving Notice on Local Authorities**

- 4.38. Sections 130A-130D of the HA 1980 enable any person to serve notice on an authority requesting it to secure the removal of certain types of obstructions

on public rights of way. Should the authority refuse or fail to take action, the applicant can seek a Magistrates' Court order compelling the authority to act.

## Damage

### Disturbing the Surface of Ways

- 4.39. Where the surface of a footpath, bridleway or any other highway which consists of or comprises a carriageway other than a made up highway has been disturbed so as to render it inconvenient for the exercise of the public right of way, an offence is committed under s. 131A of the HA 1980 and the offender can be prosecuted. Similarly it is an offence under s131 to:
- Make a ditch or excavation in a carriageway (i.e. restricted byway or byway open to all traffic), or
  - Remove any soil or turf from any part of a highway, except for the purpose of improving the highway and with the consent of the authority, or
  - Deposit anything whatsoever on a highway so as to damage the highway, or
  - Light a fire, or discharge a firearm or firework, within 50 feet from the centre of a carriageway (i.e. restricted byway or byway open to all traffic), resulting in damage to the highway.
- 4.40. Further provision is made under s. 1 of the Criminal Damage Act 1971 for prosecution where the surface of a highway maintainable at public expense is damaged. Defences exist in this case if, at the time the damage was done, the offender believed that the authority had consented to the damage or would have so consented, or where the damage was immediately needed for protection of the offender's own rights and the means of protection was reasonable.

### Agricultural Operations

- 4.41. Occupiers of land are permitted under s. 134 of the HA 1980 to plough footpaths and bridleways that run across arable land. Byways open to all traffic and restricted byways may not be ploughed, nor may footpaths and bridleways that run along the edges of a field or enclosure (headland paths). The right to plough or otherwise disturb the surface of a path that crosses arable land is subject to the path being reinstated for public use. Furthermore, the right only extends to circumstances where *"it is not reasonably convenient in ploughing, or otherwise disturbing the surface of, the land to avoid disturbing the surface of the path or way"*.
- 4.42. Where the occupier of land has ploughed or otherwise disturbed the surface of a footpath or bridleway, the path must be reinstated to not less than its minimum width, so as to make it reasonably convenient for the public to use. The line of the path must also be made apparent on the ground in doing so. The timescales for reinstatement are specified within the HA 1980 and are:

- Within 14 days where the disturbance is the first agricultural operation of the season, or
- Within 24 hours for subsequent disturbances.

4.43. On the application of the occupier, either before or during the period of the first disturbance, the authority may grant an extension for an additional period of not more than 28 days. Extensions may not be granted retrospectively. Authorities can also by Order authorise the temporary diversion of the way where it is necessary to enable such works to be carried out. Authorities can recover from the applicant their reasonable expenses incurred in connection with the Order.

4.44. Occupiers who fail to reinstate the surface of ways disturbed by ploughing or other works within the statutory periods, where reinstatement is not sufficient for the right of way, can be prosecuted.

#### **Width of Paths for the Purposes of Reinstatement Following Disturbance and Encroachment**

4.45. Where the width of a right of way is known, such as by being recorded in the Definitive Statement then this may be taken as the minimum width to which a path must be reinstated following ploughing or cropping.

4.46. If the width of the right of way is unrecorded, Schedule 12A of the HA 1980 makes provision for the “minimum width” for reinstatement by the occupier, which varies depending on the circumstances (see below). If the occupier fails to reinstate to the minimum standard and the authority undertakes the work itself, a maximum width for the reinstated surface is also set by Schedule 12A.

4.47. These minimum and maximum widths are:

- For cross-field paths:
  - Footpath: minimum width 1 metre and maximum width 1.8 metres.
  - Bridleway: minimum width 2 metres and maximum width 3 metres.
- For field-edge (headland) paths:
  - Footpath: minimum width 1.5 metres; maximum width 1.8 metres.
  - Bridleway: width must be 3 metres.
- For other highways
  - Byways, Restricted Byways and others: minimum width 3 metres; maximum width 5 metres.

4.48. The minimum width is the absolute minimum acceptable for path users. For crops such as oil seed rape, which are prone to collapse across a cleared way as they reach maturity, it will be necessary to clear the plants to a greater width than the minimum to ensure convenient passage. These minimum widths only apply in relation to the reinstatement of a public right of way following ploughing or disturbance and are not general widths to be applied in other circumstances.

## Hazards

### Excavations

- 4.49. Under s. 165 of the HA 1980 an authority may serve notice requiring a landowner to execute any necessary work of protection, repair, removal or enclosure to eliminate any source of danger on land adjoining a highway which is unfenced or inadequately fenced. The owner has a right to appeal such a notice. The authority may undertake the necessary works should the owner not comply, subject to any appeal, and recover the costs from the owner.

### Barbed Wire

- 4.50. Under s. 164 of the HA 1980 an authority may serve notice in writing upon the occupier of land adjoining a highway where barbed wire is likely to injure persons or animals lawfully using the highway. Such a notice should require the occupier to abate the nuisance caused by the barbed wire within a stated time (between one and six months from the date of the notice).

### Dangerous Trees

- 4.51. Under s. 154(2) of the HA 1980, authorities may serve notice on a landowner or occupier to remove any hedge, tree or shrub which is dead, diseased, damaged or insecurely rooted that is likely to cause damage to the highway by virtue of its condition. If the landowner or occupier does not comply, the authority may carry out the work itself and recover from them the cost of doing so.

### Dangerous Structures

- 4.52. Under the Building Act 1984, an authority has the power to deal with buildings, structures or parts of buildings or structures that are considered to be dangerous. These powers are most commonly exercised through an authority's Building Control function. These powers allow an authority to take action to remove or make safe such a structure should they be unable to find the owner to give them the opportunity to deal with the danger themselves.

## Deterrence

### Signage

- 4.53. It is an offence under s. 57 of the NPACA 1949 to place or maintain, on or near a public right of way shown on the Definitive Map, a notice or sign containing false or misleading information likely to deter the public from using that right of way. Section 57 places a duty on the authority to enforce these provisions.
- 4.54. Section 132 of the HA 1980 makes it an offence to paint, inscribe or affix any picture, letter, sign or other mark on the surface of a highway, or upon any

tree, structure or works in the highway without lawful authority. The authority has the power to remove any such sign.

- 4.55. Section 131(2) of the HA 1980 makes it an offence to pull down or obliterate a traffic sign or direction post.

### Intimidation

- 4.56. If a landowner (or occupier) challenges a member of the public by shouting or ejecting them from land, effectively deterring or preventing them from using the public right of way, the authority could be requested to fulfil their duty under s. 130 of the HA 1980 to assert and protect the rights of the public to use and enjoy public rights of way. Should this challenging conduct continue, it could be dealt with as an obstruction under s. 137.
- 4.57. Other courses of legal action include s. 4 of the Public Order Act 1986, the Protection from Harassment Act 1997, the Justices of the Peace Act 1361, as well as common law.
- 4.58. Where it appears that a public order offence has occurred, or could occur, authorities should consult their local police authority to assist in resolving the issue.

### Events

- 4.59. The use of public rights of way for organised sponsored walks, cross-country running challenges and similar events is generally considered to be acceptable, provided they reflect the rights available on the chosen route, i.e. not promoting a cycle race upon a footpath.
- 4.60. Promotion or participation in a motorised race or trial of speed on any highway is an offence under s. 12 of the RTA 1988.
- 4.61. Promotion or participation in any other motorised competition or trial (i.e. not a race or trial of speed) on a highway (which includes restricted byways) is an offence under s. 13 of the RTA 1988 unless the trial is authorised, and conducted in accordance with any conditions imposed, by the Welsh Ministers under regulations.
- 4.62. Promotion or participation in a trial between motor vehicles on a footpath, bridleway or restricted byway is an offence under s. 33 of the RTA 1988 unless authorised by the authority (subject to any conditions as the authority think fit) and with the written consent of the landowner and occupier.
- 4.63. It is an offence under s. 31 of the RTA 1988 to promote or participate in a race or trial of speed between cycles on a bridleway with no exception. The Welsh Ministers may authorise such trials on other public ways by regulations. The trials must be conducted in accordance with any conditions imposed by the regulations.

## Traffic Regulation Orders

- 4.64. Conflicts over the type of use may occur on some public rights of way and authorities should look to solve these where possible by management measures, based on cooperation and agreement. User groups will often agree to measures involving voluntary restraint, which they themselves will help to monitor.
- 4.65. Under the Road Traffic Regulation Act 1984, Orders can be made to prohibit, restrict or regulate traffic using particular highways, including footpaths, bridleways restricted byways and byways open to all traffic. The term "traffic" includes pedestrians and persons driving, riding or leading horses or other working animals. The Act sets out the purposes for which such Orders may be made. These include preventing danger to persons or other traffic using the road, preserving the character of the road for use by persons on horseback or foot and preserving the amenities of the area through which the road runs. The Welsh Ministers commend the use of such Orders to prevent inappropriate use and to protect the countryside where this is necessary and other management measures have failed or have been assessed to be inadequate.
- 4.66. Sections 14 and 15 of the Act, as substituted by Schedule 1 of the Road Traffic (Temporary Restrictions) Act 1991, also enable Temporary Traffic Regulation Orders to be made for periods of up to six months in respect of footpaths, bridleways, restricted byways, cycle tracks and byways open to all traffic, or up to 18 months for other highways. Orders may only be made due to works on or near the path; the likelihood of danger to the public or damage to the way; or for the purposes of litter clearing and cleansing. Authorities are required to have regard to the existence of alternative routes suitable for the traffic which would be affected by the Order.
- 4.67. Where landowners or utility companies apply for Temporary Traffic Regulation Orders on routes or roads that form part of the Wales Coast Path, a National Trail or regionally promoted route, they should attempt to ensure that, where access for users cannot be maintained through the closed highway, an appropriate diversion is provided and signed. Information should be supplied in advance providing details of any such order and the provisions made for users to continue their journey.
- 4.68. Sections 16A-C of the Act enable the traffic authority to restrict or temporarily prohibit, by order, the use of roads (including public rights of way) or any part of them for the purposes of facilitating the holding of a sporting, social or entertainment event; enabling members of the public to watch the event; or reducing disruption to the traffic likely to be caused by the event. This may be done to such extent and subject to such conditions or exceptions as the authority may consider necessary or expedient. In doing so, traffic authorities need to satisfy themselves that it is not reasonably practicable to hold the event other than on a road, that regard has been had to the safety and convenience of alternative routes suitable for the traffic which will be affected by the Order and that the Order would not have the effect of preventing, at

any time, access for pedestrians to any premises situated on or adjacent to the road, or to any other premises accessible for pedestrians from, and only from, the road. Orders will usually continue in place for a maximum of 3 days unless made or agreed by the Welsh Ministers.

- 4.69. A Temporary Traffic Regulation Order may only be extended by application to the Welsh Ministers. Consultation with local users prior to application for extension should be undertaken as described in Welsh Office Circular 31/92.
- 4.70. Temporary Traffic Regulation Notices may be issued for the same reasons where it appears that a restriction should come into force without delay. Notices may initially continue in force for 5 days, or for 21 days where issued due to the likelihood of danger to the public or damage to the way.

### Public Spaces Protection Orders

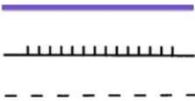
- 4.71. Public Spaces Protection Orders (PSPOs) were introduced by the Anti-Social Behaviour, Crime and Policing Act 2014 which came into force on 20 October 2014. The Act and the [regulations](#) made under the Act apply in both England and Wales. PSPOs can be used to prevent public access to certain classes of highway, including public rights of way, as well as to wider areas of open space. Public rights of way restricted by a PSPO do not cease to be regarded as a highway.
- 4.72. PSPOs replace Gating Orders and Dog Control Orders. Transition arrangements for any Gating or Dog Control Order in place when the Act came into force allow 3 years for them to be replaced by a PSPO.
- 4.73. Whilst the Countryside Code states that dogs should be kept under effective control, in replacing Dog Control Orders, a PSPO can be made to require people in public areas to:
- Keep a dog on a lead.
  - Put a dog on a lead if told to by a police officer, police community support officer or someone from the council.
  - Stop a dog accessing certain places – like farmland or parts of a park.
  - Limit the number of dogs that a person can have with them (this applies to professional dog walkers too).
  - Clear up after a dog.
- 4.74. Such controls may be required on public rights of way, for example where restrictions are necessary to protect nature conservation interests.
- 4.75. Further guidance is available within the publication, *'Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers - Statutory guidance for frontline professionals'* published by the Home Office.

## 5. Recording the Network

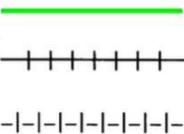
### The Definitive Map and Statement

- 5.1. A Definitive Map and Statement is conclusive evidence of the public's rights at the relevant date of that Definitive Map, or subsequent legal Order amending those rights. Once a highway has come into being, by whatever means and whether it is recorded or not, it continues indefinitely no matter whether it is used, unless there has been a legal Order closing or diverting the way.
- 5.2. Section 56 of the WCA 1981 states that the Definitive Map and Statement, taken together, provide the legal basis of rights of way and the limitations that go with them.
- 5.3. There may be additional public rights of way which are not recorded on the Definitive Map and Statement, or rights which are 'under recorded', for example showing a footpath where a bridleway exists.

### Footpaths

- 5.4. The depiction of a footpath is conclusive proof that the public had, at the relevant date, a right of way on foot. Footpaths are shown on Definitive Maps as continuous purple lines, continuous lines with short bars at intervals or broken black lines with short intervals.
 
- 5.5. The term footpath is defined for the purposes of the HA 1980 as meaning a highway over which the public have a right of way on foot only, not being a footway. A distinction is therefore drawn within the HA 1980 between footpaths and footways. Footways (i.e. pavements) also carry rights on foot only, but are part of highways that also comprise a carriageway (i.e. rights of way for the passage of vehicles) (see definitions of 'footway' and 'carriageway': s. 329 HA 1980). Invalid carriages, including wheelchairs and powered wheelchairs, may be used on both footways and footpaths by virtue of the Chronically Sick and Disabled Persons Act 1970. Powered wheelchairs must not exceed a maximum speed of 4 mph on footpaths and should be used in accordance with prescribed conditions set out in [regulations](#).

### Bridleways

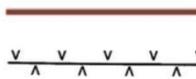
- 5.6. Bridleways are conclusive evidence at the relevant date of public rights on foot and on horseback or leading a horse and are shown on maps by a continuous green line, a continuous line with cross bars, or a broken line with cross bars in the intervals.
 
- 5.7. Section 30 of the CA 1968 expands public rights on bridleways to include a right to ride bicycles. However, in exercising that right, cyclists are required to give way to pedestrians and persons on horseback. Furthermore, the CA 1968 expressly provides that the expansion of rights to cyclists does not create any further obligation as respects maintenance or to do anything to

facilitate the use of the bridleway by cyclists. Electrically-assisted pedal cycles must meet the specification set out in the Electrically Assisted Pedal Cycles Regulations 1983, as amended by the Electrically Assisted Pedal Cycles (Amendment) Regulations 2015, in order to be considered such. As is the case on footpaths, invalid carriages, including wheelchairs and powered wheelchairs, may be used on bridleways by virtue of the Chronically Sick and Disabled Persons Act 1970. Powered wheelchairs must not exceed a maximum speed of 4 mph on bridleways and should be used in accordance with prescribed conditions set out in [regulations](#).

### Restricted Byways

- 5.8. The CROW 2000 created a new category of highway - restricted byways - carrying a public right of way on foot, on horseback or leading a horse, and for vehicles other than mechanically propelled vehicles. From 16 November 2006, ways which were shown in Definitive Maps and Statements as roads used as public paths (RUPPs) were reclassified as restricted byways. Restricted byways use the notation previously reserved for RUPPs, being a broken green line or a broken line with small arrowheads.
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- 5.9. As above, invalid carriages, including wheelchairs and powered wheelchairs may be used on restricted byways by virtue of the Chronically Sick and Disabled Persons Act 1970 (see definition of ‘footway’ under s20 of the Chronically Sick and Disabled Persons Act 1970 – ‘restricted byway’ inserted by SI2006/1177). Powered wheelchairs must not exceed a maximum speed of 4 mph on restricted byways and should be used in accordance with prescribed conditions set out in [regulations](#).

### Byways Open to All Traffic

- 5.10. A byway open to all traffic (BOAT) is a vehicular right of way carrying rights for users of mechanically propelled vehicles, which is used by the public mainly for the purposes for which footpaths and bridleways are used. Byways open to all traffic are shown by either a continuous brown line or by a continuous line with arrowheads alternatively above and below the line. In the case of byways open to all traffic, class 3 invalid carriages may be used to their maximum speed of 8 mph. Use must still be in accordance with prescribed conditions set out in [regulations](#).
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### Maintaining the Definitive Map and Statement

- 5.11. Authorities are responsible for Definitive Maps and Statements. They have a duty to keep them as up to date as possible, taking account of all of the available evidence in order to maintain a Definitive Map and Statement of the highest attainable accuracy. Authorities should give priority to producing an up to date Map and Statement on which all public rights of way are recorded and which covers all of the area for which they are responsible.

- 5.12. Section 53 of the WCA 1981 requires authorities to keep their Definitive Maps and Statements under continuous review and to modify them by way of Orders where they are shown to be wrong or incomplete. The starting point is the Definitive Map and Statement for a particular area as defined in s. 53(1) and, until replaced by a modified Map and Statement prepared in accordance with the provisions of s. 57(3), may be:
- The latest Definitive Map and Statement following the completion of a review carried out under s. 33 of the NPACA 1949 Act as originally enacted, or as amended by the CA 1968; or
  - Where no review took place, or the first review was abandoned under the provisions of s. 55 of the WCA 1981, the original Definitive Map and Statement prepared under s. 32 of the NPACA 1949; or
  - For those former county boroughs and other excluded areas for which the survey provisions were never adopted or for areas where a survey was begun, but abandoned, the Map and Statement prepared under s. 55(3) of the WCA 1981.
- 5.13. Section 57(3) of the WCA 1981 enables authorities to consolidate Modification Orders into a new Map and Statement. Section 57A enables authorities to prepare a consolidated Map for the whole of the area for which they are currently responsible. The relevant date of a new Map and Statement should be not more than six months before the date on which it is prepared, and should be later than the relevant date of the last Modification Order consolidated into it.
- 5.14. Section 53(2) of the WCA 1981 requires the Definitive Maps and Statements to be continuously reviewed by authorities. It requires authorities to modify their Definitive Maps and Statements by Order as soon as reasonably practicable after the occurrence of any of the events specified in s. 53(3).
- 5.15. Section 53(2) distinguishes between events which occurred before the commencement of the WCA 1981 on 28 February 1983 (s.53(2)(a)) and those which occurred afterwards (s.53(2)(b)). This distinction is significant as the enabling section must be cited within the preamble of modification orders.
- 5.16. Authorities are not required to have completed modification of their Maps and Statements for all events which preceded the commencement of the WCA 1981 before embarking on modifications relating to subsequent events: both are to be done at the same time. It is also possible for a single Modification Order to be based on several events that qualify under both s. 53(2)(a) and s. 53(2)(b), where that is considered appropriate.
- 5.17. Where, with regard to former roads used as public paths, a way is shown in the Map with the restricted byway notation, but is described in the Statement as a highway of another description, authorities should establish the correct status of the way and, in accordance with their duty under s. 53 of the WCA 1981, modify the Map and Statement appropriately. Any applications for Orders to modify the status of a road used as public path which were made

before 16 November 2006 are to be determined under the WCA 1981, subject to s. 67 of the NERC 2006.

## Modifying the Definitive Map and Statement

- 5.18. The events to be considered in relation to the modification of Definitive Maps and Statements are set out in s. 53(3) of the WCA 1981.
- Subsection 3(a) concerns necessary changes to the Definitive Map and Statement consequent upon the confirmation of Orders under highways and other legislation and Magistrates' Court Orders under s. 116 of the HA 1980.
  - Subsection 3(b) concerns the presumed dedication of footpaths, bridleways and restricted byways at common law or by virtue of s. 31 of the HA 1980. It can apply to ways shown on the Definitive Map and Statement but over which greater rights are now presumed to have been dedicated.
  - Subsection 3(c) relates to the discovery by authorities of evidence which shows that a right of way not shown on the Map and Statement subsists, or is reasonably alleged to subsist, and should be shown; or that a right of way already shown ought to be shown as a right of way of a different description; or that a right of way does not exist and should be removed, or that the particulars contained in the Map and Statement require modification.
- 5.19. Authorities should not make an Order to update the Definitive Map and Statement under subsection 3(a) until, where they are required to do so, certification or notification has been issued that the effect of the relevant Public Path Order or Magistrates' Court Order has taken place on the ground. These subsection 3(a) Definitive Map Modification Orders take effect on being made.
- 5.20. When deciding whether a way ought to be shown on the Definitive Map and Statement as a byway open to all traffic, authorities should examine the characteristics of the way. Relevant case law suggests that, for a carriageway to be a byway open to all traffic, it is not a necessary precondition for there to be equestrian or pedestrian use or that such use is greater than vehicular use, but the character, type and suitability for use by walkers and horse riders rather than vehicles may be considered. Further information is available in the Planning Inspectorate's Rights of Way [Advice Note 8](#). Where a way presumed to have been dedicated as a highway for all purposes under s. 31 of the HA 1980 also satisfies the definition of a byway open to all traffic, authorities may make an Order to add the way to the Definitive Map and Statement under s. 53(3)(c)(i) of the Act, subject to the provisions described in paragraph [5.56](#).
- 5.21. The restricted byways implementing legislation provides that restricted byways may also be recorded. The NERC 2006 amended the HA 1980 to permit the addition of restricted byways, by means of an Order made under the WCA 1981, to the Definitive Map and Statement on the basis of user or documentary evidence. Section 68 of the NERC 2006 also amends the HA

1980 so as to clarify that a qualifying period of use by pedal cycles may give rise to a restricted byway, but case law indicates that such use is capable of giving rise to bridleway rights only when considering past use.

- 5.22. Authorities should keep records of authorisations given under s. 147 of the HA 1980, and agreements made under s147ZA of the same Act, and are encouraged to make those authorisations available for public inspection alongside the Definitive Map and Statement. However, the Welsh Ministers do not consider that the duty to keep the Definitive Map and Statement under continuous review includes a requirement to record the existence of a s. 147 or s. 147ZA authorisation or agreement on the Map and Statement. The only way in which such an authorisation or agreement could be recorded on the Definitive Map and Statement is by an Order under s. 53(3)(c)(iii). Section 53(4) makes clear that a Definitive Map Modification Order may add details of limitations affecting the right of way to the statement.

### Applications for Definitive Map Modification Orders

- 5.23. Section 53(5) of the WCA 1981 enables any person to apply to the authority for an Order to be made modifying a Definitive Map and Statement as respects any of the events specified in s53(3)(b) or (c) of the WCA 1981. The procedure for making and determining applications is set out in Schedule 14 to the WCA 1981. Persons are not entitled to apply for a Definitive Map Modification Order under s. 53(3)(a) of the WCA 1981.
- 5.24. The form of application is prescribed in regulation 8 of [the Wildlife and Countryside \(Definitive Maps and Statements\) Regulations 1993](#) and set out in Schedule 7 to those regulations. Submitted applications must be accompanied by a map to a scale of not less than 1:25,000 showing the claimed rights of way which are the subject of the application and copies of any supporting evidence, including statements of witnesses. It is sufficient for the maps accompanying an application to have been digitally derived from an original map of larger than 1:25,000 so long as the scale of the application map as presented during application is less than 1:25,000. Whilst an authority may waive some of the requirements of Schedule 14 of the WCA 1981 in deciding whether or not to accept an application, case law has made it clear that in the case of an application to recognise a byway open to all traffic (whether by upgrading an existing way or by the first recording of any public rights on a way) the claimed mechanically propelled vehicle rights, otherwise automatically extinguished, are preserved under s. 67(3) and (6) of the NERC 2006 only if the full stated requirements of Schedule 14 to the WCA 1981 are met.
- 5.25. Notice that an application for an Order has been made must be served by the applicant on every owner and occupier of the land involved. Applicants who cannot find out the name or address of the owner or occupier of the land may apply to the authority for exemption from the requirement to serve a personal notice, and for its direction that notice be served instead by addressing it to the owner or occupier of the land (as described in the notice) and affixing it to a conspicuous object on the land. Such a direction should not normally be

withheld if the applicant can show that he or she has made every reasonable effort to identify the owner or occupier of the land. Finally, a certificate must be supplied to the authority, by the applicant, to inform it that notice of the application has been served on all of the landowners and occupiers concerned, subject to the provisions made for instances where land ownership cannot be determined. The forms of the notice and certificate are prescribed by regulation 8 of, and Schedules 8 and 9 to, the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.

- 5.26. Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant town or community councils, decide whether to make an Order on the basis of the evidence discovered. If no decision has been reached within 12 months (dated from when the applicant had served notice on the affected landowners and occupiers), the applicant has the right to ask the Welsh Ministers to direct an authority to reach a decision on an application. The Welsh Ministers, in response to such a request, will take into account:
- Any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date.
  - The reasonableness of such priorities.
  - Any actions already taken by the authority or expressed intentions of further action on the application in question.
  - The circumstances of the case.
  - Any views expressed by the applicant.
- 5.27. Decisions on applications must be served on the applicant and on the owner and occupier of the land involved. Reasons should be given where an application is refused.
- 5.28. In the event of an authority refusing to make an Order, the applicant has a right of appeal to the Welsh Ministers against that decision. Appeals must be lodged with the Planning Inspectorate within 28 days from the date on which the authority serves notice on the applicant of its decision. Appeals should be made in writing, giving grounds for the appeal, and be accompanied by copies of the application, the map showing the way concerned, the supporting documentation and the authority's decision. A copy of the notice of appeal must also be served on the authority but without the accompaniments. The Welsh Ministers, in considering an appeal, are required to decide, following review of the available information, whether an Order should be made and if so to direct the authority accordingly. The Welsh Ministers are not empowered to authorise the modification of the Definitive Map and Statement or to make an Order themselves.
- 5.29. Authorities must record all applications for Definitive Map Modification Orders and the outcomes of those applications in a register that is available to the public.

## Order Making

- 5.30. Before making an Order, authorities must consult other local authorities (including town and community councils) in whose area the way is located. In accordance with s. 53(2)(b) of the WCA 1981, authorities should make the Order as soon as reasonably practicable after they have concluded that one should be made, or after having been directed by the Welsh Ministers to do so following a successful appeal under Schedule 14 of the WCA 1981.
- 5.31. Orders made under the WCA 1981 reflect specified rights which are already claimed to exist (or not to exist in the case of downgrading or deletions) based on evidence gathered and therefore there is no wider statutory duty to consult beyond other local authorities. Nevertheless, seeking information more widely about a proposed WCA 1981 Order could produce additional material relating to its existence or true status and may pre-empt misunderstandings, resolve objections and reduce conflict. The prescribed organisations (see Annex 1) are a starting point for the organisations to be consulted, but authorities should not regard these as the only organisations that they should consult.
- 5.32. The forms of the various Orders provided for by the WCA 1981 are prescribed in the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993. Where appropriate, the prescribed form makes provision for alternative entries in the schedule to the Order for the different modifications that can be made to Definitive Maps and Statements i.e. additions, deletions, changes in status and the modification of written statements as the circumstances of each case may require.
- 5.33. Authorities should include sufficient, accurate information to allow the way to be unambiguously identified. They should include information about the width of ways to be added to the Definitive Map and Statement. Authorities should also record limitations and conditions, for example: gates and stiles along the way, and any other specification which is appropriate. This provision is only applicable where the dedication of the route was subject to such limitations. For example, it would be inappropriate to include a gate as a limitation where the gate was installed after a period of use giving rise to a statutory dedication. In these circumstances, the gate, or any other structure, would be regarded as an obstruction unless its installation fulfilled certain conditions and was formally authorised by the authority.
- 5.34. The scale of the map referred to in the Order is prescribed in the 1993 Regulations and must be not less than 1:25,000, although larger scale maps should be used wherever practicable. The scale, orientation and grid references should be clearly shown on the map. Apart from deletions, the notation used to depict the various classes of right of way is prescribed in the Regulations for Definitive Maps and Statements. For deletions, a continuous bold black line is recommended.
- 5.35. Since there is no procedure for the correction of errors once an Order has been confirmed (limited powers exist for an Inspector to modify Orders prior to confirmation), other than the result of the discovery of evidence, particular

attention should be paid to the preparation of Orders to ensure that the Order map and schedule do not conflict. Moreover, since Orders effectively modify the Definitive Map and Statement on confirmation, and are therefore subject to the provisions of s. 56(1) of the WCA 1981 regarding the conclusive evidential effect of Definitive Maps and Statements, the Order map and schedule serve effectively the same function respectively as the Definitive Map and Statement.

- 5.36. The procedure for making and determining whether or not to confirm Definitive Map Modification Orders under s. 53(2)(a) and (b) is set out in Schedule 15 to the WCA 1981. The Schedule provides for the publication of notices announcing the making of Orders, the consideration of representations and objections, and the modification of Orders.

### Publicity for Orders

- 5.37. The content of notices announcing the making of Orders and the publicity to be given to them are set out in paragraph 3 of Schedule 15 to the WCA 1981. The notice must be published in at least one local newspaper circulating in the area in which the land to which the Order relates is situated. It should be noted that a newspaper is defined as being published periodically or at intervals not exceeding twenty-six days between the publication of any two such papers. An authority's own widely distributed paper may be used, provided it meets this definition. In addition, a copy, together with a copy of the Order or relevant extract from the Order, should be served on:

- Every owner and occupier of that land.
- The relevant town and community council.
- The prescribed organisations.
- Other persons as the authority considers appropriate, such as a National Park authority and other local organisations which are recognised as being representative of user interests.

- 5.38. The description in the notice of the general effect of the Order should be sufficient to enable the public to understand its fundamental purpose and to identify the rights of way involved. The notice published in the local newspaper will not be accompanied by a plan and it is therefore helpful for key points of the route to be referenced by features on the ground as well as by grid references.
- 5.39. A copy of the notice must be displayed in a prominent position at both ends of the way. The notice must be accompanied by a plan illustrating the effect of the Order. However, whilst maps prepared as part of the Order are required to be at the appropriate scale, this may result in a map that is too large to display on site. In such instances, it may be appropriate to display a smaller plan on site depicting the effect of the Order. The notice must also be available at council offices in the locality and any other places considered by the authority to be appropriate. The places should be reasonably accessible to local people. Authorities should serve and display notices of the making of an Order at the same time as the notice is published. A copy of the notice should

also be sent to any person who has requested to be sent copies, and who has paid for this service. Authorities may also wish to make use of their websites to publicise Orders.

- 5.40. Authorities are reminded of their obligations in relation to parity for the Welsh language (para 2.31-2.35) and that notices on site and in the press should therefore be published in English and Welsh.
- 5.41. Section 70A of the WCA 1981 states that the notices served in connection with WCA 1981 processes should be by one of the methods described in s. 329 of TCPA 1990. Ordinarily, this will be by delivering it in person to the addressee or their usual address; by posting it by recorded delivery; or by email where an email address has been given.

### Representations and Objections

- 5.42. Authorities should seek to forestall representations and objections by prior discussion with landowners, users and representative organisations. They should also try to resolve representations and objections when they have been made.
- 5.43. The period for making representations and objections must be not less than 42 days from the date of publication of the notice that an Order has been made.
- 5.44. Paragraph 3(8) of Schedule 15 to the WCA 1981 permits any person, at any time before the objection period expires, to require the authority to provide, within 14 days of the receipt of the request, details of any documents it took into account in making the Order. There is also provision for people to inspect and take copies of relevant documents in the possession of the authority and to be informed by the authority of the whereabouts of such documents not in its possession.

### Confirmation of Orders

- 5.45. Authorities may confirm Orders that are unopposed, or in respect of which all the representations and objections have been withdrawn. Authorities must submit Orders in respect of which there are representations or objections, and Orders which are unopposed but require modification, to the Welsh Ministers. The Planning Inspectorate, which administers this process on behalf of the Welsh Ministers, has a [checklist](#) of documents which must accompany Orders submitted for a decision on whether or not they should be confirmed.
- 5.46. Paragraph 5 of Schedule 15 to the WCA 1981 states that where one Order contains one or more modifications to the Definitive Map or Statement in respect of which there are representations or objections, and other modifications in respect of which there are no such representations or objections, the authority can confirm the unopposed part of the Order, which has the effect of modifying the Definitive Map and Statement to the extent of the confirmed part. The authority must then submit that part of the Order in respect of which there are representations or objections to the Welsh

Ministers to consider whether or not to confirm it. Authorities must notify the Planning Inspectorate when they intend to do this. Any element of an Order that is subdivided for partial confirmation in this way must appear to be capable of confirmation in its own right.

### **Publicising Decisions on Orders**

- 5.47. The requirements for publicising confirmed Orders and the non-confirmation of Orders are specified in paragraph 11 of Schedule 15 to the WCA 1981. Confirmed Orders are given the same publicity as that given to made Orders. A copy of the decision not to confirm an Order must be served on the same persons on whom notice of the making of the Order was served.
- 5.48. Copies of all confirmed Orders made under s. 53 (including Orders made under s. 53A which have the effect of modifying the Definitive Map and Statement) and s. 54 (where outstanding Orders to reclassify roads used as public paths are being determined to a conclusion) must be sent to the Ordnance Survey at the time of confirmation.

### **Deletion or Downgrading of Ways Shown on the Definitive Map and Statement**

- 5.49. Once prepared, and until subsequently revised, the Definitive Map and Statement is conclusive evidence in rights of way disputes. Authorities are under a duty to make an Order modifying the Definitive Map and Statement where they have evidence that a public right of way should be downgraded or deleted. They may discover evidence themselves, or evidence may be presented with an application to modify the Map and Statement.
- 5.50. Notwithstanding the clear starting point in relation to the possible deletion or downgrading of a right of way, the powers in s. 53(3) of the WCA 1981 include the making of Orders to delete or downgrade rights of way shown on the Definitive Map and Statement in cases where evidence shows that rights did not exist at the time when they were first shown on the map. In making such an Order, the authority must be able to say, in accordance with s. 53(3)(c)(ii) or (iii), that:
- A highway of a particular description ought to be shown on the Map and Statement as a highway of a different description; or
  - That there is no public right of way over land shown in the Map and Statement as a highway of any description.
- 5.51. The evidence needed to remove what is shown as a public right from such an authoritative record as the Definitive Map and Statement – and this would equally apply to the downgrading of a way with “greater” rights to a way with “lesser” rights – will need to fulfil certain stringent requirements. These are that:
- The evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time

the Definitive Map was surveyed and made or considered in a previous application.

- The evidence must be of sufficient substance to displace the presumption that the Definitive Map is correct.
- The evidence must be cogent.
- There must be positive evidence of any erroneous recording.

- 5.52. While all four conditions should be met, they should be considered in the order listed. Before deciding to make an Order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified.
- 5.53. Applications may be made to an authority under s. 53(5) of the WCA 1981 to make an Order to delete or downgrade a right of way. Where there is such an application, it will be for those who contend that there is no right of way, or that a right of way is of a lower status than that shown, to prove that the Map requires amendment due to the discovery of evidence, which when considered with all other relevant evidence, clearly shows that the right of way should be downgraded or deleted. The authority is required, by paragraph 3 of Schedule 14 to the Act, to investigate the matters stated in the application; however it is not for the authority to demonstrate that the Map reflects the true rights, but for the applicant to show that the Definitive Map and Statement should be revised to delete or downgrade the way.
- 5.54. In the case of deletions, it has previously been argued that a case for presumed dedication could be established on a way that had formerly been recorded on the Definitive Map but which was found, subsequently, to have been recorded in error. These were based on the belief that the use of the way, between the first recording of the way on the Definitive Map and Statement and when it was determined that an error had been made, could give rise to presumed dedication. The Welsh Government's advice is that this argument is incorrect. Instead, it is the Welsh Government's view that use of the way in such circumstances cannot be "as of right" for the purpose of presumed dedication, as rights that cannot be prevented cannot be acquired. It is not possible for a right of way to be dedicated for the purposes of s. 31 of the HA 1980 when use of the way is by virtue of it having been shown on the Definitive Map but which is subsequently removed.

### **Preparation of Definitive Maps and Statements for Excluded Areas**

- 5.55. The WCA 1981 extended the requirement to have a Definitive Map and Statement to the whole of Wales and authorities whose areas include areas previously excluded from the requirement for a survey are now under a duty to produce a Definitive Map and Statement using the provisions of the WCA 1981. Authorities are recommended to build a comprehensive record through adding routes to a "blank" Map and Statement by means of Orders made under s. 53 of the WCA 1981.

## Extinguishment of Certain Rights under Part 6 of NERC 2006

- 5.56. Section 67(1) of the NERC 2006 extinguished, with effect from 16 November 2006, all unrecorded public rights of way for mechanically propelled vehicles, with certain exceptions. The exceptions were, broadly, for highways that were part of the 'ordinary roads' network, or highways that had been expressly created or dedicated as a public right of way for mechanically propelled vehicles. The Act provided for additional exceptions where, in certain cases, there were long standing duly-made applications, under s. 53(5) of the WCA 1981, to have a byway open to all traffic added to the Definitive Map and Statement. The Act also curtailed the scope for the future creation of public rights of way for mechanically propelled vehicles by providing that they can only come into existence where they are expressly created for such vehicles.

## List of Streets

- 5.57. Section 36(6) of the HA 1980 requires authorities to make and keep up to date a list of streets within their area which are highways maintainable at public expense. Lists are therefore required to include, in so far as they are publicly maintainable, the whole or any part of any of the following:
- Any highway, road, lane, footway, alley or passage.
  - Any square or court.
  - Any land laid out as a way whether it is for the time being formed as a way or not.
- 5.58. As a result, the list of streets is required to include all of those ways shown on the definitive map that are maintainable at public expense, in addition to any other publicly maintainable highway.
- 5.59. The form in which the list of streets should be kept and the details included within it are not specified. The list of streets may, however, take the form of a map. Whilst many copies of that map may exist, only one will be an authoritative record.

## Unclassified Roads on the List of Streets

- 5.60. When an application is made under the WCA 1981 to add a public right of way to the Definitive Map and Statement, the inclusion of an unclassified road on the HA 1980 list of highways maintained at public expense may provide evidence of vehicular rights. However, this is not conclusive and must be considered with all other relevant evidence in order to determine the nature and extent of those rights.

## 6. Changing the Network

- 6.1. There is a legal process that must be followed when a right of way is to be closed or diverted. This is normally done by an authority making a Public Path Order under the HA 1980 or the TCPA 1990.
- 6.2. The HA 1980 allows footpaths, bridleways and restricted byways to be created, diverted and extinguished. The Act also provides for special Orders to be made in certain circumstances and enables authorities to make applications to the Magistrates' Court to alter public rights of way, including byways open to all traffic.
- 6.3. The TCPA 1990 enables authorities to stop up or divert public footpaths, bridleways and restricted byways as well as to create or improve alternative highways as replacements, but only where they are affected by development. The Act also allows the Welsh Ministers to make similar changes to any highway.
- 6.4. Orders under the HA 1980 are based on the expediency of a desired change, subject to public use or interest tests. Orders are typically made either in the interests of the public, a cross section of the public or of interested parties as set out in the relevant section.
- 6.5. The TCPA 1990 can be used to change the network when planning permission is given. Orders can be made to alter or extinguish routes because they would otherwise be incompatible with the consented development. When it is expedient to change the network due to or in association with development, use of the HA 1980 is not precluded. However, Orders under the HA 1980 are subject to specific public interest tests.
- 6.6. Changes can also occur as a result of legal instruments made other than by an authority. These include Side Road Orders and Acts made by the National Assembly for Wales.

### Public Path Orders – Highways Act 1980

#### Public Path Creation Orders

- 6.7. Section 26 of the HA 1980 gives an authority the power to create:
  - Footpaths;
  - Bridleways; or
  - Restricted byways.
- 6.8. Authorities can make Orders creating routes where it appears to them that a path or way is needed and that it is expedient for a way to be created. When making this judgment, authorities must have regard to the extent to which the new way would add to:
  - The convenience or enjoyment of a substantial section of the public; or

- The convenience of persons resident in the area.
- 6.9. In both cases, the effect that the creation would have on the rights of persons interested in the land must also be considered, alongside the Act's provisions as to compensation (s. 28, HA 1980). Authorities must also have due regard to:
- The needs of agriculture (including the breeding or keeping of horses).
  - The needs of forestry.
  - The desirability of conserving flora, fauna and geological and physiographical features.
- 6.10. When having regard to the provisions for compensation in section 28, it is preferable to proceed with the consent of the landowner and, if necessary, to seek to agree compensation at an early stage. It will often be the case that Creation Orders are made at the same time as other Orders (as described below) but they are also useful where agreement is impossible or inappropriate, e.g. where it has not been possible to identify the landowner or where an owner agrees to a creation but lacks legal capacity to dedicate in an agreement.
- 6.11. When making an Order under s. 26 the HA 1980, the authority should consider any works that will be required to make the way fit for public use. If necessary, the Order should state that it does not take effect for a stated number of days following confirmation so that such works can be undertaken and completed. Where the work has been completed prior to confirmation, no such period is required.
- 6.12. Prior to confirming an Order, an authority must consider any material provisions in any current Rights of Way Improvement Plan for the area.

### Public Path Extinguishment Orders

- 6.13. Section 118 of the HA 1980 gives an authority the power to extinguish:
- Footpaths;
  - Bridleways; or
  - Restricted byways.
- 6.14. When *making* such an Order, the authority must be satisfied that it is expedient that the way should be stopped up because it is not needed for public use.
- 6.15. Prior to *confirming* an Order, the authority or, if the Order is opposed, the Welsh Ministers, must be satisfied that confirmation is expedient having regard to:
- The extent to which that the path or way would, apart from the Order, be likely to be used by the public.

- The effect of the extinguishment on land served by the path or way, account being taken of the provisions as to compensation.

When considering these matters, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded (s. 118(6), the HA 1980).

- 6.16. The expediency assessment that is required at the Order-making stage is therefore different from that required when the Order is confirmed. At confirmation, the decision-maker does not have to be satisfied that the way is not needed for public use. An Order could therefore be confirmed even where the way was likely to be used to a limited degree, but where the decision-maker concluded that extinguishment was still expedient in the circumstances.
- 6.17. Temporary circumstances for the purpose of s. 118(6) should be interpreted broadly. The Courts have previously found temporary circumstances to include obstructions that may have the appearance of permanent features, but which could be removed by appropriate legal means - such as an electricity sub-station, a pine tree and a 12ft high laurel hedge.
- 6.18. Ways need not be shown on the Definitive Map and Statement before they can be extinguished, but authorities must be satisfied as to the status of ways before making an Extinguishment Order.

### Public Path Diversion Orders

- 6.19. Section 119 of the HA 1980 gives an authority the power to divert:
- Footpaths;
  - Bridleways; or
  - Restricted byways.
- 6.20. Before making a Diversion Order it must appear to the authority that it is expedient to divert the path in the interests of the public or of the owner, lessee or occupier of the land crossed by the path or way. A Diversion Order may be made as long as it is expedient to divert all or part of a way in the interests of at least one of these parties and authorities must be able to explain why this is so. Compensation provisions also extend to Diversion Orders (s. 28 of the HA 1980).
- 6.21. Again, 'expedient' in s. 119 of the HA 1980 has a wide meaning and the authority may take a broad range of factors (such as the historical integrity of the route) into account when deciding whether to make an order, or confirm an unopposed order.
- 6.22. The authority must also be satisfied that the Diversion Order does not alter the point of termination of the way:
- If that point is not on a highway (e.g. it ends at the sea shore, or at a viewing point); or

- Where it is on a highway, otherwise than to another point which is on the same highway, or another highway connected with it, and which is substantially as convenient to the public.
- 6.23. A Diversion Order may in part follow an existing path or road, but the Order should not be used to close a path where a substantial part of the alternative route is already subject to a public right of way. Otherwise, the tests appropriate to a Public Path Extinguishment Order would be improperly side-stepped.
- 6.24. A Diversion Order can only amend the Definitive Map and Statement insofar as the course or line of the right of way is concerned; it cannot alter the status of the way. For example, a Diversion Order can neither downgrade a bridleway to a footpath, nor upgrade a footpath to a bridleway. However, where, as set out above, a diverted route is coincident in part with an existing right of way, the status of either the existing or diverted right of way may change as a consequence of the other right of way having a different status. Clearly, where two rights of way of differing status were coincident, the superior rights would prevail along the coincident section.
- 6.25. Authorities may consider concurrent Creation and Extinguishment Orders where the termination of points of existing and/or proposed paths render a Diversion Order inappropriate (e.g. alteration of a cul-de-sac path).
- 6.26. In deciding whether to make a Diversion Order, it is advisable to consider both the tests for making the Order and for confirming the Order. Even if all the tests are met, the authority may still exercise its discretion not to make an Order.
- 6.27. Before confirming an Order, the authority, or the Welsh Ministers if the Order is opposed, must be satisfied that:
- It is expedient in the interests of the person(s) stated in the Order that the line of the path be diverted (subject to the constraints on altering the point of termination: see para. 6.22 above).
  - That the diverted path will not be substantially less convenient to the public (which can include, for example, comparing the lengths of the current and proposed paths and the difficulty of walking them).
  - That it is expedient to confirm the order having regard to the effect which:
    - The diversion would have on the public enjoyment of the path or way as a whole.
    - The Order would have on other land served by the existing public right of way, taking into account provisions for compensation.
    - Any new path or way would have on the land over which it is to be created and any land held with it, again taking into account provisions for compensation.
  - Regard has been given to any material provisions included within any extant Rights of Way Improvement Plan for the area.

- 6.28. Whereas ‘convenience’ may be interpreted as meaning ease of use, ‘enjoyment’ can take into account other factors such as the views to be enjoyed from the path or way. It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable. If so, when coming to a conclusion on expediency, the decision-maker would have to balance the applicant’s interests in having the Order confirmed against any amenity loss to the public.
- 6.29. Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way). In such circumstances, the Diversion Order should not be confirmed, since a Diversion Order cannot be confirmed if the path or way will be substantially less convenient to the public in consequence of the diversion.
- 6.30. Unlike section 118 of the HA 1980, section 119 does not explicitly require the decision-maker to disregard temporary circumstances – for example, any buildings or structures preventing or diminishing the use of the existing way – when considering whether to make or confirm a Diversion Order. The Planning Inspectorate [Advice Note 9](#) states that in forming an opinion on whether the replacement route is not substantially less convenient to the public, a fair determination can only be made on the assumption that the existing route is available to the public to its full legal extent.
- 6.31. Section 119(3) of the HA 1980 requires the authority to consider if any works will be required to bring the way into a fit condition for public use. If such works are necessary, the Order should state: (i) that the diversion of the footpath does not take effect for a specified number of days following confirmation to allow those works to be carried out; and (ii) the extinguishment of the current footpath also does not take effect until the highway authority certifies that the works have been carried out.
- 6.32. Ways need not be shown on the Definitive Map and Statement before they can be diverted but, as with a s. 118 Order, authorities must be satisfied as to the status of ways before making an Order.

### **Creation Agreements – Highways Act 1980**

- 6.33. Section 25 of the HA 1980 provides for the creation of a footpath, bridleway or restricted byway by agreement.
- 6.34. When making an agreement, the authority should consider any works that will be required to bring the way into a fit condition for public use. If necessary, the agreement should state that it does not take effect until any specified conditions have been complied with. The agreement may include provision for compensation and state limitations for the new way, so long as those limitations are not incompatible with the path being recorded as a public right of way. Any way that is created by s. 25 of the HA 1980 becomes maintainable at public expense.

- 6.35. Agreements may only be entered into with the owner of the land crossed by the proposed path and authorities should satisfy themselves of the capacity of the other party through inspection of deeds or registered title. A party cannot enter into an agreement with itself. As such, it is not possible for an authority to make a s. 25 agreement for a new public right of way on its own land. Consideration should instead be given to a dedication of rights by deed under s. 1 of the Localism Act 2011 or to a Creation Order under s. 26 of the HA 1980.
- 6.36. When an agreement is made, the authority must ensure that the path is physically laid out on the ground and give notice in at least one local newspaper circulating in the area. Whilst an authority must consult other local authorities if the land affected lies within the adjoining authority's area, there is no requirement to consult users before entering into an agreement. Authorities are recommended, however, to notify town and community councils and user organisations about the ways created.
- 6.37. Creation agreements which are conditional and rely on the confirmation of an associated Order cannot be taken into account when determining applications for those Orders. A sealed unconditional creation agreement already in force can be considered however.

## **Special Public Path Orders – Highways Act 1980**

### **Rail Crossing Order**

- 6.38. Rail operators have the right to apply, under s118A or s119A of the HA 1980, as appropriate, to an authority for Rail Crossing Orders, which extinguish or divert footpaths, bridleways, or restricted byways that cross railways by means of level crossings. The Rail Crossing Extinguishment and Diversion Orders Regulations 1993 prescribe the information the rail operator must supply when applying for a Rail Crossing Order, and the form of Orders and notices. It will usually be for the operator to justify the need for the Order and, while some information relating to the use of the path may be available from the highway authority or other sources, the operator is expected to make the best assessment on the information available. In addition, the operator should include proposals as to how the crossing will be stopped up securely should an Order be successful. Applications which are not in the appropriate form (i.e. as prescribed in these regulations or in a form substantially to the like effect), or which fail to supply the required information, cannot be accepted as validly made.
- 6.39. Since Rail Crossing Orders are intended primarily to address the question of public safety, it is essential that authorities deal with all such applications promptly. Where a valid application has been made and an authority has neither confirmed the Order, nor submitted it to the Welsh Ministers for confirmation within 6 months of receipt, s. 120(3A) of the HA 1980 provides that the Welsh Ministers may make the Order without consulting the authority, although this will normally be done in response to a written request from the operator.

- 6.40. Section 118A(1) provides for the extinguishment of a footpath, bridleway or restricted byway that crosses a railway, otherwise than by a tunnel or bridge, where it appears to the authority expedient in the interests of the safety of members of the public using it, or likely to use it. Care should be taken to avoid the creation of a cul-de-sac that would encourage trespass on to the railway. Section 118A(2) provides that the Order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a like right of way.
- 6.41. Before confirming the Order, the Welsh Ministers, or the authority in the case of unopposed Order, must be satisfied in accordance with s. 118A(4) that it is expedient to do so having regard to all the circumstances, and in particular to whether it is reasonably practicable to make the crossing safe for public use, and to any arrangements made for ensuring that any appropriate barriers and signs are erected and maintained if the Order is confirmed. Other considerations may include:
- The extent of use currently made of the existing path.
  - The risk to the public of continuing such use.
  - The effect that the loss of the path would have on users of the public rights of way network as a whole.
  - The opportunity for taking alternative measures to deal with the problem, such as a Diversion Order or a bridge or tunnel and the relative cost of such alternative measures.
- 6.42. Where an Order is confirmed, signs should be erected at both ends of the extinguished way informing users of the extinguishment and advising them of the nearest alternative route. Authorities should also consider whether to provide a map or to erect signposts and waymarkers showing the alternative route. Section 118A(5) provides that authorities may require the operator to enter into an agreement to defray, or contribute towards, any expenses incurred in connection with the erection or maintenance of any barriers or signs.
- 6.43. Section 119A(1) provides for the diversion of a footpath, bridleway or restricted byway that crosses a railway, otherwise than by a tunnel or bridge, where it appears to the authority expedient in the interests of the safety of members of the public using it or likely to use it. As such an Order must not be confirmed unless the decision-maker is satisfied that it is expedient in all the circumstances, authorities are also advised to consider whether the new way would be reasonably convenient to the public and the effect it would have on the land served by the existing path or way, and on the land over which the new path or way is to be created. Consideration should also be given to the effect that the diverted way would have on the rights of way network as a whole and the safety of the diversion, particularly where it passes along or across a vehicular highway.
- 6.44. Under s. 119A(6) the Diversion Order may require the railway operator to maintain all or part of the way created by the Order and under s. 119A(8), the

authority may require the operator to enter into an agreement to defray part, or all, of any compensation that may be payable, together with any expenses reasonably incurred in connection with the erection and maintenance of barriers and signs or in making up the new way. As with Rail Crossing Extinguishment Orders, the operator must ensure that suitable fencing is erected to bar access to the railway and that appropriate signs are provided advising potential users that the path has been diverted. Authorities should consider whether it is necessary to provide a map showing the alternative route, or to erect signposts and waymarks for this purpose.

- 6.45. Section 119A(7) makes the extinguishment element of a Rail Crossing Diversion Order subject to the satisfactory physical implementation of the replacement section of the way, mirroring the provision made in s. 119(3) for public path diversions (see section 6.32 above).

### **Crime Prevention Special Order**

- 6.46. Sections 118B and 119B of the HA 1980 currently apply in Wales only insofar as they relate to Schools Protection Special Orders. Therefore, in Wales, the provision made under these sections does not currently extend generally to the making of Crime Prevention Special Orders for closure or diversion of rights of way on the grounds of crime prevention in designated areas.
- 6.47. Public Space Protection Orders may be a more appropriate response to crime and anti-social behaviour if it is desired to preserve the public rights for possible physical reinstatement of a route at a later date (para 4.71-4.76).

### **Schools Protection Special Order**

- 6.48. Sections 118B and 119B of the HA 1980 enable authorities to close or divert a right of way that crosses school land, if expedient, for the purpose of protecting pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity, or any other risk to their health or safety arising from such activity.
- 6.49. Prior to the confirmation of an Order made under s118B and s119B, the Welsh Ministers or, in the case of uncontested Orders, the authority, must consider the expediency of doing so with regard to other measures that could have been taken to secure the school and the likelihood of a substantial improvement to security, as well as the effects of the Order on the land served by the extinguished right of way or the diversion. The powers are not available to National Park Authorities.
- 6.50. Sections 118C and 119C of the Act are not in force in Wales.

### **SSSI Diversions**

- 6.51. Sections 119D and 119E of the HA 1980 are not in force in Wales.
- 6.52. The sections would otherwise enable an Authority, at the request of Natural Resources Wales, to make an Order to divert a public right of way where the

public use of the highway is causing, or continued public use would be likely to cause, significant damage to a Site of Special Scientific Interest (SSSI).

## Public Path Orders – Town and Country Planning Act 1990

### Stopping-Up and Diversion Orders Made by Local Authorities

- 6.53. Section 257 of the TCPA 1990 gives an authority the power to divert or extinguish:
- Footpaths;
  - Bridleways; or
  - Restricted byways.
- 6.54. The TCPA 1990 also enables orders to include provision for the creation of an alternative highway, or the improvement of an existing one, for use as a replacement to one being stopped up or diverted.
- 6.55. Authorities have no power to make Orders for extinguishing or diverting highways carrying rights for motorised vehicles in order to enable development to be carried out. Orders are made by the authority that granted the planning permission or, where permission was granted by the Welsh Ministers (including a permission contained in a special or general development order, or under an order designating an enterprise zone) or the development is carried out by a government department, by the authority which in normal circumstances would have granted the planning permission.
- 6.56. Before making an Order the authority must be satisfied that it is necessary to do so in order to enable development to be carried out either:
- In accordance with planning permission granted under Part III (of the Act); or
  - By a government department.
- 6.57. It should not, however, be assumed that an Order should be made simply because planning permission has been granted.
- 6.58. The necessity test entails examining the activities authorised by the planning permission (both operational development and changes of use) to see whether they are, or are not, compatible with the retention of highway rights. An activity which would involve obstruction of a highway (for example, the erection of a structure across the line of a highway or introducing a use such as outdoor storage or long-term parking) would be incompatible with the highway and so make out a case of necessity.
- 6.59. Even where a case of necessity is made out, an authority still has discretion whether to make an Order or not. However, having concluded that the planning permission should be granted, there must be good reasons for deciding that an Order, which would permit implementation of that permission, should not be made.

- 6.60. In coming to a judgment as to whether to make an Order, the following should be taken into account:
- The interests of the general public.
  - The potential effects of the Order on some members of the public, such as occupiers of property adjoining the highway.
  - Any potential financial loss to members of the public.
- 6.61. When making a diversion, the new path must either commence or terminate at some point on the line of the original way. However, alternative ways need not do so and may, for instance, run parallel to the route being stopped up. To avoid the creation of a cul-de-sac and to enable the public, where appropriate, to return to that part of the original way not affected by the development, any alternative way provided should be linked via another highway to the original way.
- 6.62. When a diversion or alternative right of way is proposed to be provided and dedicated over land not owned by the developer, the consent of the landowner(s) to the proposed dedication must be obtained before the Order is made. No compensation provision exists in respect of TCPA orders other than where agreed independently. Where the length of way to be stopped up or diverted straddles two authority areas, the Order must be made jointly by both authorities (unless one authority discharges the functions of the other by means of an agreement under s. 101 of the Local Government Act 1972).
- 6.63. When making a Diversion Order under s. 257 of the TCPA 1990, the authority should consider any works that will be required to bring an alternative way into a fit condition for public use. Where necessary, the Order, as specified by Schedule 1 of the Town and Country Planning (Public Path Orders) Regulations 1993 should state within its paragraph 3 that the diversion will not have effect until the authority certifies that the requirements defined in its paragraph 2 have been complied with. Note that certification achieved by completion of works must be advertised to the public in a local newspaper.
- 6.64. To confirm a Stopping-Up or Diversion Order, the authority, or the Welsh Ministers if the Order is opposed, must be satisfied that the criteria considered at the Order-making stage have been met.
- 6.65. Where the development, insofar as it affects a right of way, is completed before the necessary Order to divert or extinguish the right of way has been made or confirmed, the powers under s. 257 and s. 259 of the TCPA 1990 to make and confirm Orders are no longer available. This is because the development, which the Order is intended to enable, has already been carried out. If such a development has already been completed, there is no basis for an Order to be made. It is, of course, open to the authority to consider what action, if any, it might take to secure the diversion or extinguishment of the right of way by the exercise of such other powers as may be available. In this respect, development should be regarded as completed if the work remaining to be carried out is minimal.

### **Extinguishment Orders on Land Held for Planning Purposes**

- 6.66. Section 258 gives an authority the power to stop up a footpath, bridleway or restricted byway on its own land if it plans to develop the land.
- 6.67. To confirm an Extinguishment Order, an authority, or the Welsh Ministers if the Order is opposed, must be satisfied that:
- An alternative right of way has been or will be provided; or
  - The provision of an alternative right of way is not required.

### **Procedure Available to Welsh Ministers in Anticipation of Planning Permission**

- 6.68. Authorities cannot make Public Path Orders in anticipation of the granting of planning permission (though may undertake preliminary work such as consultation). Section 253 of the TCPA 1990 Act enables the Welsh Ministers to make and advertise a draft of the Order where:
- An application for planning permission has been made by an authority, statutory undertaker, or a National Park Authority; or
  - The application stands referred to the Welsh Ministers pursuant to a direction under s. 77; or
  - The applicant has appealed under s. 78 against a refusal of planning permission or of approval required under a development order, or against a condition of such permission or approval.
- 6.69. Similar procedures also exist under regulation 15 of the Town and Country Planning General Regulations 1992 to enable the Welsh Ministers to publish notice of an Order under s. 251, extinguishing a public right of way over land held for planning purposes, at the same time as acquiring land either by compulsory purchase order (s. 226) or by agreement (s. 227). Once the land over which the right of way subsists has been acquired, the Welsh Ministers may also make a Compulsory Purchase Order under s. 254 to acquire land to provide an alternative right of way.

### **Acquisition of Land Act 1981 Cases**

- 6.70. Section 32 of this Act enables acquiring authorities to make Orders for the extinguishment of non-vehicular rights of way over land that is, could be, or is proposed to be, acquired compulsorily. Before making an Order, the acquiring authority must be satisfied that a suitable alternative has been or will be provided (or that an alternative is not required), e.g. by way of a public path agreement or Order.
- 6.71. Section 32 provides for restrictions on the Order-making power, including as to when the extinguishment of the right of way takes effect. The power in section 32 is also not available where s. 251 or s. 258 of the TCPA 1990 apply. Schedule 6 of the HA 1980 applies to the making, confirmation, validity and date of operation of Orders under s. 32 (see s. 32(2), the Acquisition of Land Act 1981).

## Temporary Stopping-Up Orders (Minerals)

- 6.72. Section 261 of the TCPA 1990 gives an authority the power to make Orders under s. 257 to stop-up or divert a footpath, bridleway or restricted byway for a period of time so that minerals can be worked from the surface.
- 6.73. Prior to confirmation of the Order, the authority, or the Welsh Ministers if the Order is opposed, must be satisfied that:
- The way needs to be stopped up to enable minerals to be worked by surface working.
  - The way can be restored afterwards to a condition not substantially less convenient to the public.
- 6.74. Prior to the TCPA 1990, the suspension of non-vehicular rights of way affected by opencast mining was the subject of the Opencast Coal Act 1958. Whilst no new orders can now be made under the 1958 Act, any that preceded 31 December 1999 will remain in operation.
- 6.75. The Welsh Ministers may revoke an Order made under s. 15 of the Opencast Coal Act 1958:
- If no permitted activities have been carried on pursuant to the opencast planning permission on the land over which the right of way subsisted and they are satisfied that there is no early prospect of such activities being so carried on; or
  - As soon after such permitted activities have been so carried on as they are satisfied that it is no longer necessary for the purpose of carrying on such permitted activities that the right of way should be suspended.
  - They are satisfied that it is appropriate to do so on account of any failure on the part of the person on whose application the order was made to comply with any of the requirements of s. 15A(10) of the 1958 Act.
- 6.76. The procedure for revoking an existing Order is not prescribed, but is likely to be initiated by the Welsh Ministers, via the Planning Inspectorate, seeking to clarify whether the conditions for revocation have been met or whether an authority advising them of such of their own volition.
- 6.77. When confirming the need, or lack thereof, for continuation of an Order, authorities should submit copies of the original Order to the Welsh Ministers with a supporting statement identifying the permitted activity and advising as to the state of completion or the prospect of the activities being carried out.
- 6.78. Where records of the original Order or permitted activity are no longer available, it is sufficient to establish the extent to which *any* opencast activity or opencast planning permission remains active within the affected area. Where no prospect exists of any such activity being carried out, or where it is

clear that the suspension of rights is no longer necessary for the purposes of carrying on any such completed activity, an Order may be revoked.

### Magistrates' Court Applications

- 6.79. Section 116 of the HA 1980 enables authorities to apply to a Magistrates' Court for an Order to extinguish or divert a highway of any description other than a trunk or special road. These provisions apply therefore to footpaths, bridleways, restricted byways and byways open to all traffic, in addition to the powers available in s. 118 and s. 119 of the HA 1980 and other legislation to extinguish and divert all of these rights of way, other than byways open to all traffic.
- 6.80. There may be circumstances where it is appropriate to use the Magistrates' Court procedure under s. 116 of the HA 1980. For example, s. 116 could be used to extinguish or divert a footpath or bridleway (or retain such rights) and simultaneously extinguish a vehicular right of way. It could also be used to extinguish vehicular rights and preserve footpath, bridleway or restricted byway rights over byways open to all traffic, although authorities should be aware that this could expose a resulting footpath or bridleway to ploughing with the result that its character and appearance as a landscape feature is destroyed.
- 6.81. It is considered, however, that authorities should make use of the other powers available to extinguish or divert rights of way unless there are good reasons for not doing so.

### Concurrent Orders

- 6.82. Creation and Diversion Orders can be made concurrently with Extinguishment Orders to provide alternative routes to those being stopped up. Where Orders are associated in this manner, the new routes contained within the Creation or Diversion Order(s) may be taken into account when determining whether or not to confirm the Extinguishment. This does not apply to Creation Agreements.
- 6.83. In considering the new routes, account should be taken of the convenience of the alternative path compared to that which is to be extinguished and if this is significantly less than that enjoyed by users of the existing path, authorities will need to consider whether the criteria set out in s. 118(1) of the HA 1980 have been met. Care should also be taken to ensure that full consideration is given to all of the matters set out in both s. 26 (or sections 119-119B in the case of Diversion Orders) and s. 118.
- 6.84. Where related Extinguishment and Creation or Diversion Orders have been made concurrently, and representations or objections have been made to one but not the other, authorities are advised to submit both Orders to the Welsh Ministers for confirmation. There is no provision for combining both Creation and Extinguishment in one Order.

## Joint and Combined Orders

- 6.85. No regulations are, at present, in force in Wales allowing s. 53A of the WCA 1981 to become operative.
- 6.86. As a result, provisions to enable authorities to include directions to modify the Definitive Map and Statement in certain Orders are unavailable. Authorities should therefore continue to make separate Orders as required.

## Side Road Orders & Acts of Parliament

- 6.87. Where planning permission is granted for constructing or improving a highway, and another highway crosses or enters the route, or is, or will be affected by such development, powers are available under s. 248 of the TCPA 1990 to enable the Welsh Ministers to stop-up or divert such other highways, where this is considered expedient in the interests of safety or to facilitate the movement of traffic on the highway. In addition, powers to make Side Road Orders are available under s. 14 of the HA 1980 in respect of trunk or classified roads (not being special roads). It is not appropriate to use s. 247 or s. 257 of the TCPA 1990 to stop-up or divert ways for these purposes.
- 6.88. It is similarly possible for Acts of Parliament or the National Assembly for Wales to affect named rights of way directly.

## Applications for Costs

- 6.89. The parties in rights of way proceedings that arise when a rights of way Order is submitted to the Planning Inspectorate for confirmation are normally expected to meet their own expenses. In these cases, unlike with ordinary civil litigation, an award of costs does not necessarily follow the outcome. In other words, costs are not simply awarded to the party in whose favour the judgement goes. Subject to the exceptions outlined below, costs are awarded only on grounds of unreasonable behaviour.
- 6.90. The Planning Inspectorate may order that one party pay the costs of another in a case where:
- That party has behaved “unreasonably”.
  - The unreasonable behaviour has caused the other party to incur unnecessary costs that they would not otherwise have incurred.
- 6.91. Guidance on the proper approach when considering costs applications is contained in Welsh Office Circular 23/93, ‘Awards of Costs incurred in Planning and Other (Including Compulsory Purchase Order) Proceedings’.
- 6.92. Costs may be awarded only in cases where a public inquiry or hearing is held and do not extend to rights of way cases determined by written representations and a site visit. Rights of way procedures do not enable applications for costs to be made in advance of the public inquiry or hearing – any application on the ground of another party’s unreasonable behaviour

should be made to the Inspector at the hearing or inquiry. However, parties to a hearing or inquiry are encouraged to provide notification in advance to the opposing party of the possibility that an application for costs might be made and the reasons for it.

- 6.93. A party may have to pay costs if a hearing or an inquiry could reasonably have been avoided, or if it is unreasonably delayed or extended. For example, the authority could be at risk if an Inspector halts a hearing or an inquiry because they find that the Order is defective. Anyone who does not comply with the timetables set out by the Planning Inspectorate (unless there is a good reason why they could not do so) could also be at risk if they cause a hearing or inquiry to be adjourned, or to last longer than it would have done if they had complied with the timetables, and by doing so they cause others to incur unnecessary or wasted expense in the process.
- 6.94. Applicants and relevant persons do not have to attend a hearing or an inquiry. They may decide to rely on their written evidence, although if they do, they should advise the Planning Inspectorate in good time. But if an applicant or a relevant person asks to be heard and then fails to turn up or be represented without good reason, they risk an award of costs for unreasonable behaviour. Similarly, a person who has made an irrelevant objection and who unreasonably insists on being heard at a hearing or an inquiry risks an award of costs. There is also a risk of an award of costs in the event that a hearing or an inquiry has to be cancelled as a result of an objection being withdrawn at a late stage in the proceedings.
- 6.95. In a case where the party against whom costs are being claimed is not present at the inquiry or hearing, the Inspector will not be able to hear their representations against the claim. In such cases the Inspector will report the application and circumstances, with provisional conclusions but no recommendation, to the Planning Inspectorate's Costs Branch, who will follow up and determine the claim after inviting the absent party to comment. Any comments received will be exchanged with the claiming party before a decision is issued.
- 6.96. In cases where there is an interim decision or inquiry and an application for costs is related to the substance of the Order, as opposed to a matter of procedure, then it is likely the application will be determined only at the end of the process, when the merits of the Order have been settled beyond doubt.

### **'Analogous' Orders**

- 6.97. Public Path Creation Orders made under s. 26 of the HA 1980 are considered to be analogous to Compulsory Purchase Orders, in that the making or confirmation of the Order could take away from an objector some right or interest in land for which the statute gives a right to compensation. Extinguishment and Diversion Orders made under sections 118-119B of the HA 1980 may also be analogous, depending on the particular circumstances.
- 6.98. If a person with an interest in the land over which a path is to be created, extinguished or diverted successfully objects to such an Order, an award of

costs will be made in the person's favour unless there are exceptional reasons for not doing so. The award of costs will therefore follow where the person attends, or is represented at, a hearing or inquiry and is heard as a statutory objector, and the Order is not confirmed, or the Order is modified in favour of the person's interest, whether wholly or in part. No application for costs need be made at the hearing or inquiry by such an objector, as the Welsh Ministers will write to the party concerned at the end of the Order proceedings. The award would be made against the authority making the Order, although this would not, of itself, imply unreasonable behaviour by the authority.

### **Orders Determined at a Magistrates' Court**

- 6.99. The costs procedures described above apply where an Inspector, on behalf of the Welsh Ministers, determines whether or not to confirm an Order through a public inquiry or hearing. If all parties act "reasonably" then there is no risk of costs being awarded. In contrast, a contested Diversion or Extinguishment Order made under s. 116 of the HA 1980 will be determined at a Magistrates' Court under the civil litigation costs procedures, where the costs "follow the event". In other words, liability for costs depends on the outcome of the case itself. This means that the party, or parties, that fail(s) to get the result they were seeking would be at risk of having to meet the costs of the successful party, or parties.

### **Procedures for Public Path Orders**

- 6.100. The statutory provisions relating to the creation, diversion and stopping up of public rights of way have been framed to secure the protection of both the public rights and the interests of owners and occupiers, as well as the interests of bodies such as statutory undertakers. It is essential, therefore, that authorities wishing to bring an Order into effect by a particular date should allow enough time, when making the Order, to comply with all the statutory requirements, which may include a public inquiry into objections. In particular, it should be borne in mind that the obstruction of a path or way before the right of way over it has been extinguished is unlawful.

### **Application**

- 6.101. Authorities have discretion to make Public Path Orders, as described above, and may do so of their own choice or at the request of another party. The form of application for Rail Crossing Orders is prescribed but otherwise, where another party seeks a change to the network by Public Path Order, the form of application is not prescribed. Authorities may nevertheless find it useful to deal with requests by way of application form, collecting information for administrative purposes and to assist with assessment of legal tests. Natural Resources Wales may apply for a Public Path Creation Order to enable the public to obtain access to any access land or to facilitate such access. However, the rights to apply for Public Path Orders provided by sections 118ZA and 119ZA of the HA 1980 are not, at present, in force in Wales.

- 6.102. Should the authority decide to proceed with the application, the Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993, amended by regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996, permit authorities to charge applicants the costs of making Orders under sections 26, 118, 118A, 119 and 119A of the HA 1980.
- 6.103. Authorities should publish their scales of charges and should inform applicants in advance of the maximum charge for their application. Authorities must not charge more than the costs they have incurred.
- 6.104. Examples of the costs which authorities may incur in making an Order are:
- Notifications to landowners, statutory undertakers, prescribed organisations, other authorities and other persons.
  - Posting notices on site and elsewhere.
  - An advertisement in one local newspaper for each of the stages of the Order, namely making the Order, confirming the Order and the coming into force of the Order (where the final stage is separately required). The newspaper must be circulated widely and reliably in the area covering the Order and under the requirement to obtain best value, less conventional publications such as free sheets may satisfy the requirement.
  - Site inspections.
  - Research into the status and previous history of the way.
  - Negotiations with applicants and other interested parties before making the Order.
  - Preparing reports for Committee.
  - Preparing Orders and notices.
- 6.105. Authorities can recover from applicants the costs of informal consultations (such as negotiations between authorities, applicants, landowners, user groups and any other interested parties) where they lead to Orders being made. It is for the authorities themselves to decide what services are necessary to the making of a particular Order and applicants should be made aware that these may vary according to the circumstances of the particular case.
- 6.106. Objections to an Order, and the decision taken by the Welsh Ministers on whether or not the Order should be confirmed, are outside the applicant's control. It is considered unreasonable to expect the applicant to bear the extra expense incurred by the authority in pursuing opposed Orders through to confirmation. All costs relating to the submission of an Order to the Welsh Ministers - and the subsequent decision on whether or not it should be confirmed - have therefore been excluded from the power to charge. The authority will nevertheless wish to ensure that the applicant is afforded every opportunity to participate in any public inquiry or hearing. Although objectors have the right to be heard by the Welsh Ministers, such matters can also be considered on the basis of written representations. Such arrangements have proved to be cost-effective and all parties should consider this procedure wherever possible.

6.107. Applicants are not entitled to a refund other than under the following conditions:

- Where the authority fails to confirm an unopposed Order.
- In the case of unopposed Orders, the authority fails to submit the Order for confirmation to the Welsh Ministers without the agreement of the person who requested the Order.
- Where proceedings preliminary to the confirmation of a Public Path Creation Order are not taken concurrently with proceedings for a Public Path Extinguishment Order.
- Where the Order cannot be confirmed because it has been invalidly made.

6.108. Authorities may not seek payment in advance of incurring of costs. Payment should therefore be sought after the advertisement of the making of the Order has been placed with the local newspaper. Payment for subsequent advertisements in relation to the confirmation of the Order, or certification of the new path, should similarly only be sought after these have been placed with the newspaper. Authorities may defer confirmation or, in the case of opposed Orders, referral to the Welsh Ministers, until payment has been made.

6.109. The power to charge is discretionary and authorities may choose not to charge for this service at all. It is expected that authorities will normally seek to use this power to recover their costs incurred in making these Orders, but it is accepted that in some circumstances it may not be cost-effective to do so or that other circumstances may influence charging decisions. Applicants should therefore normally expect to bear the cost of making an Order.

6.110. Before making an Order proposing to divert a right of way under s. 119 of the HA 1980, authorities can require the owner, lessee or occupier of the land to enter into an agreement under s. 119(5) to defray or contribute towards expenses incurred by the authority in bringing a new way into a fit condition for use by the public.

### **Pre-Order Consultation**

6.111. Local authorities, and National Park authorities in whose area the way or proposed way is situated, must be consulted before an authority makes an Order. If a way to be extinguished or diverted lies partly within the area of an adjoining authority, that authority's consent must be obtained.

6.112. In addition to the statutory requirements, authorities should consider consultation with community or town councils, prescribed organisations, user groups, Local Access Forums, and liaison groups. Natural Resources Wales should be consulted about any way or proposed way which lies within a National Park or affects a Long Distance Route as defined within the NPACA 1949 (including National Trail). This approach should help authorities to forestall representations and objections before they make Orders, by means

of discussion and negotiation with landowners, users and representative organisations.

- 6.113. Authorities should consult widely on proposals which could result in Orders affecting public rights of way. This applies especially to proposed Orders to be made under the HA 1980 or the TCPA 1990, where there may be alternative options.
- 6.114. Statutory undertakers should be consulted before an Order is made and where necessary their consent obtained. Section 121(4) of the HA 1980 provides that they may refuse to consent to the confirmation of Extinguishment and Diversion Orders. Section 24(2) of the HA 1980 requires the Welsh Ministers to give their approval if a proposed right of way is to connect with a trunk road. Where notices are required to be served on owners of land and the land belongs to an ecclesiastical benefice group, paragraph 1(4) of Schedule 6 to the HA 1980 specifies that notice must also be served on the Diocesan Board of Finance for the diocese in which the land is situated. The consent of the appropriate authority as defined in s. 327 of the HA 1980 is required in respect of the Act's application to Crown land.
- 6.115. Orders made under s. 257 of the TCPA 1990 which affect apparatus belonging to statutory undertakers cannot be confirmed without their consent.

### Determination

- 6.116. When deciding whether to make Creation, Diversion or Extinguishment Orders under the HA 1980, authorities are required under s. 29 and s. 121(3) of the Act to have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features. Section 6 of the Environment (Wales) Act 2016 places a duty on public authorities (including Local Authorities) to 'seek to maintain and enhance biodiversity' so far as it is consistent with the proper exercise of those functions.
- 6.117. In respect of land designated as a National Park or an Area of Outstanding Natural Beauty, the relevant legislation, respectively s. 11A(2) of the NPACA 1949 and s. 85 of the CROW 2000, requires an authority, in carrying out its functions (which will include the making of Orders and agreements to create, divert or extinguish public rights of way), to have regard to the purposes for which the National Park or Area of Outstanding Natural Beauty was created.

### Order Making

- 6.118. The forms of the various Orders and notices provided for by the HA 1980 are prescribed in the Public Path Orders Regulations 1993 (as amended) and The Town and Country Planning (Public Path Orders) Regulations 1993.
- 6.119. The limitations and conditions set out in the schedule to a form of Order should only be limitations and conditions affecting the actual exercise of the public right of user, e.g. design, standard, position, number of gates, conditions for removal of structure or minimisation of its effect on users.

- 6.120. There are no standard widths for ways which are created or diverted within a Public Path Order. Local circumstances affecting the widths that are appropriate or achievable will vary, however authorities should specify widths in every Public Path Order.
- 6.121. The maps contained in an Order should be on a scale of not less than 1:2,500 or, if no such map is available, on the largest scale readily available. Extracts from a current edition of an Ordnance Survey map should be used and it should be endorsed with the copyright conditions required by the Ordnance Survey. The scale and orientation should be clearly shown, as well as the grid references to enable the public to identify the rights of way concerned. The map should also contain sufficient detail to show the effect, not just on the path or way to be stopped-up or diverted, but on those highways connected to it. In the case of Diversion Orders made under the HA 1980, the Order map must show whether part of the new route to be followed comprises an existing path or way and, if so, define that part.
- 6.122. Notices must be published in at least one local newspaper circulating in the area to which the Order relates. At the same time that the notice is published, a copy of the same notice together with a copy of the draft Order or relevant extract from the draft Order, and a copy of the accompanying map, must also be served on: every owner and occupier of that land; the relevant community or town council; the prescribed organisations (Annex 1); and, where required, other persons or bodies such as a National Park Authority and Natural Resources Wales.
- 6.123. Authorities must also notify any persons or groups who require them to do so of Orders made over a given period proposing to add to or amend the definitive map and statement or to change the network. This requirement may apply to every Order made by the authority or Orders of a particular description and may relate to the whole or any part of their area. Authorities may make a reasonable charge for doing so.
- 6.124. The description in the notice of the general effect of the Order should be sufficient to enable the public to understand its fundamental purpose and to identify the rights of way involved. The notice published in the local newspaper will not be accompanied by a plan and therefore key points of the route should be referenced to features on the ground as well as being specified by grid references.
- 6.125. A copy of the notice must be displayed in a prominent position at both ends of the section of the way to be created, diverted or stopped up by the Order. The notice must be accompanied by a plan illustrating the effect of the Order. The notice must also be displayed at council offices in the locality and any other places considered by the authority to be appropriate. The places should be reasonably accessible to local people.
- 6.126. Authorities must send copies of the statutory notices of Orders made as specified below to the organisations listed in Annex 1.

- 6.127. Notices required to be given under the TCPA 1990 should be issued by reference to s. 329. Notices given in relation to the HA 1980 should be by reference to s. 322.
- 6.128. In both cases, this will usually be by delivering it in person to the addressee or their usual address, or by posting it by recorded delivery. The TCPA 1990 also includes provision for service by email where an email address has been given. Further provisions exist where the names of the affected person cannot be ascertained, including procedures for posting a notice on site where necessary, within Schedule 6, paragraph 3(C) of the HA 1980; Schedule 14, paragraphs 6 and 7 of the TCPA 1990; s. 329 of the TCPA 1990; and s. 322 of the HA 1980.

### Representations

- 6.129. The period for making representations and objections must be not less than 28 days from the date of publication of the notice that an Order has been made. Authorities should ensure that a copy of the Order and accompanying map are available for inspection at all reasonable hours for the period. Authorities should particularly consider extending the objection period where it would otherwise expire on a day of foreseeable office closure, e.g. a Bank Holiday.
- 6.130. Once an Order has been advertised, authorities are expected to attempt to resolve objections and to secure their withdrawal. A representation or objection is duly made to an Order provided it is within time and in the manner specified in the notice. If duly made objections are not withdrawn then the Order cannot be confirmed by the Order-making authority. If the Order-making authority wishes to proceed with a Public Path Order which has been objected to or to have it confirmed with amendments, then the Order must also be submitted to the Welsh Ministers to determine whether or not it should be confirmed. The authority is not entitled to refuse to accept an objection based on its own judgement of whether or not the grounds of the objection or representation appear to be relevant, although it will need to make observations on the objection as part of its submission to the Welsh Ministers.

### Confirmation

- 6.131. Authorities may confirm Orders which are unopposed, or to which all duly made representations and objections have been withdrawn. Authorities have the discretion not to proceed with Orders in respect of which there are representations or objections, or may withdraw an Order for other reasons, such as external factors making a scheme no longer appropriate. In order to bring the procedure to an end, the authority must make a formal resolution not to proceed, and should notify the applicant and those who have made representations or objections of the passing of the resolution.
- 6.132. In the case of an Order in respect of which there are duly made representations or objections, an Inspector appointed by the Welsh Ministers will determine whether or not to confirm it. Once an Order is submitted to the Welsh Ministers, the power of decision passes to them, or their appointed

Inspector. However, if all the representations and objections are subsequently withdrawn, the authority will be asked whether it wants to confirm the Order itself. The Planning Inspectorate, which administers the confirmation process on behalf of the Welsh Ministers, has a [checklist](#) of documents which must accompany an Order submitted for a decision on whether or not it should be confirmed.

6.133. Orders which require confirmation by the Welsh Ministers under paragraph 2 of Schedule 6 to the HA 1980 (Orders under sections 26 and 118 – 119D of the Act, or s. 32 of the Acquisition of Land Act 1981) may be modified by the inspector.

6.134. Claims for compensation under s. 28 of the HA 1980 (or as applied by s. 121(2), as amended) from persons with an interest in the land affected by an Order must be made in writing to the authority and served on it within six months from the date on which the Order comes into operation.

### Ordnance Survey

6.135. Ordnance Survey maps include public rights of way and so are important tools for the public in using the network. It is in everyone's interest that these maps accurately reflect the public's rights, and on completion of any Orders, the authority are required to submit the relevant information to Ordnance Survey. Authorities should send copies of Orders which involve the authority certifying that a change has come into effect to Ordnance Survey after the Authority has so certified. Other Orders should be sent after they have been confirmed.

**Table 1: When authorities should send copies of orders to Ordnance Survey**

<i>Provision</i>	<i>Ordnance Survey</i>
<i>Highways Act 1980</i>	
s26 Compulsory powers for creation of footpaths, bridleways and restricted byways	Order on confirmation
s116 Power of Magistrates' Court to authorise stopping up or diversion of highway	On decision of the Magistrate
s118 Stopping up of footpaths, bridleways and restricted	Order on confirmation
s118A Stopping up of footpaths, bridleways and restricted byways crossing railways	Order on confirmation
s119 Diversion of footpaths, bridleways and restricted byways	Order on certification
s119A Diversion of footpaths, bridleways and restricted byways crossing railways	Order on certification
<i>Wildlife and Countryside Act 1981</i>	
s53(2) definitive map modification order	Order on confirmation
<i>Town and Country Planning Act 1990</i>	
s257 Footpaths, bridleways and restricted byways affected by development : orders by other [than Secretary of State]	Order on certification
s258 Extinguishment of public rights of way over land held for planning purposes	Order on confirmation
<i>Acquisition of Land Act 1981</i>	
s32 Power to extinguish certain public rights of way	Order on confirmation

## 7. Planning Consent and the Network

- 7.1. Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken; and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed.
- 7.2. The grant of planning permission does not entitle developers to obstruct a public right of way. It cannot be assumed that because planning permission has been granted that an Order under s. 247 or s. 257 of the TCPA 1990, for the diversion or extinguishment of the right of way, will invariably be made or confirmed. Development, in so far as it affects a right of way, should not be started and the right of way should be kept open for public use, until the necessary Order has come into effect. The requirement to keep a public right of way open for public use will preclude the developer from using the existing footpath, bridleway or restricted byway as a vehicular access to the site, unless there are existing additional private rights. Authorities must ensure that applicants whose proposals may affect public rights of way are made aware of the limitations to their entitlement to start work at the time planning permission is granted. The local planning authority should not impose conditions on a grant of planning permission which are the subject of other statutory controls, for example, diversion or stopping up orders. It may however be helpful to append a note or informative to the decision to draw the applicant's attention to other forms of consent that must be obtained before development can commence.
- 7.3. The effect of development on a public right of way is a material consideration in the determination of applications for planning permission and authorities should ensure that the potential consequences are taken into account whenever such applications are considered.
- 7.4. Most outline planning applications do not contain sufficient information to enable the effect on any right of way to be assessed. Consequently, such matters are usually dealt with during consideration of the matters reserved under the planning permission for subsequent approval.
- 7.5. Welsh Office Circular 32/92 sets out the information to be supplied and validated with a planning application. All public rights of way crossing or adjoining the proposed development site should be marked on the plan to be submitted with the full planning application. While the information supplied by an applicant should therefore make clear how the potential development will impinge on any rights of way, authorities will need to ensure that all rights of way affected by the development are identified and take into account any applications for the addition of a path or way to the Definitive Map, any modifications that the authority itself may be proposing to make, the possible existence of any other rights on the ways shown on the Definitive Map and any ways not yet recorded on the Definitive Map.

- 7.6. It is likely to be to the benefit of the authority and the developer to be aware of the impact of a development scheme on the local rights of way network as early as possible in the process (this might be at the pre-application stage or the outline planning stage). Any potential disadvantages to the public arising from alternative arrangements proposed for an affected right of way can be minimised through early liaison between the developer, the authority, local amenity groups, prescribed organisations (Annex 1) and affected individuals.
- 7.7. Where pre-application discussions are undertaken, the rights of way officer should be included in all meetings. Any consultation at this stage should include the prescribed organisations as a matter of course.
- 7.8. This course of action will produce an acceptable scheme in many instances and make it more likely that the eventual proposals will be acceptable to the public. Further, the approach should minimise uncertainty, costs in revising design schemes and delays. Not adopting this approach could lead to significant delays, mainly because the authority does not have the power to confirm an opposed Public Path Order. Instead, it will have to be submitted to the Welsh Ministers for a decision on whether or not it should be confirmed. Applicants should be reminded that formal permission to stop-up or divert a public right of way remains a legal requirement regardless of the granting of planning permission. Failure to ensure formal permission is in place before work starts could lead to prosecution.
- 7.9. When an existing right of way needs to be revised to accommodate the planned development, any alternative alignment should avoid the use of estate roads, drives, gardens or other private areas wherever possible and preference should be given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic. The potential of alternative routes to encourage sustainable transport and active travel should also be considered.
- 7.10. Where the application is for full planning permission, such as mineral extraction, the decision on the application may be preceded by lengthy negotiation between the developer and the authority, with the eight-week period stipulated in the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 for the determination of planning applications being set aside by mutual consent. If there is a reasonable expectation that planning permission will eventually be forthcoming, there is no reason why the proposals for any consequential stopping-up or diversion of public rights of way should not be considered concurrently with, and as part of, discussions on the proposed development, rather than await the grant of planning permission. This should include, as far as possible, the preparation in draft of the Order, and associated notices, the form of which is prescribed in the Town and Country Planning (Public Path Orders) Regulations 1993, although care should be taken to ensure rights of way staff are kept informed of any changes to the design whilst the application is being determined.

- 7.11. The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 provides that development affecting a public right of way must be advertised in a local newspaper and by posting a notice on the site. This is entirely separate from any notices and advertisements required when making and confirming a subsequent Extinguishment or Diversion Order.
- 7.12. The procedure for diversion or extinguishment of rights of way made under the TCPA 1990 follows that described in para 6.100– 6.137. The relevant regulations are the Town and Country Planning (Public Path Orders) Regulations 1993.

### **Permitted Development**

- 7.13. The Town and Country Planning (General Permitted Development) Order 1995 (as amended) sets out a wide range of development that can be undertaken without needing to make an application for planning permission. Where restrictions contained within the 1995 Order refer to highways, this includes, in general, all public rights of way. Where reference is made to highways “used by vehicular traffic”, this should include any byway open to all traffic or restricted byway recorded on the Definitive Map and Statement.
- 7.14. It is an offence under s. 4(1)b of the RTA 1988 to drive a mechanically propelled vehicle on a footpath, bridleway or restricted byway without lawful authority. Therefore the use of such a public right of way to create new vehicular access, or similar, that might be considered to be permitted development under the Town and Country Planning (General Permitted Development) Order 1995, could be an offence under the RTA 1988.

## Annex 1

### Prescribed Organisations

Organisation	Consultation extent	Pre-order consultation address	Order notification extent	Order address
Auto Cycle Union	All cases, except those affecting footpaths or bridleways over which no public vehicular rights are claimed, or suspected to exist	The appropriate local representative as notified to the authority	All orders made in England and Wales	Auto Cycle Union, Wood Street, Rugby, Warwickshire CV21 2XY (Except where otherwise notified to the authority)
British Driving Society	All cases, except those affecting footpaths and bridleways over which no vehicular rights are claimed, or suspected to exist	British Driving Society, Endersley, Church Road, Wingfield, Eye, Suffolk IP21 5QZ	All definitive map orders made in England and Wales	British Driving Society, Endersley, Church Road, Wingfield, Eye, Suffolk IP21 5QZ
British Horse Society	All cases	BHS local representative as notified to the authority	All orders made in England and Wales	BHS, British Equestrian Centre, Stoneleigh, Kenilworth, Warwickshire CV8 2LR
Byways and Bridleways Trust	All cases	BBT local nominee if notified to the authority	All orders made in England and Wales	Byways and Bridleways Trust PO Box 117, Newcastle Upon Tyne, NE3 5YT
Cyclists' Touring Club	All cases, except those affecting footpaths over which no other rights are claimed, or suspected	Cyclists' Touring Club, Parklands, Railton Road, Guildford, Surrey. GU2 9JX	All orders made in England and Wales	Cyclists' Touring Club, Parklands, Railton Road, Guildford, Surrey. GU2 9JX
Open Spaces Society	All cases, but only in those areas	The appropriate local	All orders made in England and	Open Spaces Society, 25A Bell

	where the Society has notified the authorities concerned of their interest	representative as notified to the authority	Wales	Street, Henley-on-Thames, Oxon RG9 2BA
The Ramblers' Association	All cases	RA local representative as notified to the authority	All orders made in England and Wales	Ramblers' Association, 2nd Floor Camelford House, 87-90 Albert Embankment, London, SE1 7TW
Welsh Trail Riders Association	All cases in Wales, except those affecting footpaths and bridleways over which no public vehicular rights are claimed, or suspected to exist	W.T.R.A. Ltd PO Box 3015 Cardiff CF3 5YE United Kingdom  (Except where otherwise notified to the authority)	All orders made in Wales	W.T.R.A. Ltd PO Box 3015 Cardiff CF3 5YE United Kingdom  (Except where otherwise notified to the authority)

Authorities should note that the names and addresses of the persons to whom these notices must be sent may change from time to time, or may vary from one area to another. The prescribed organisations have been asked to ensure that authorities are notified well in advance of such changes. Authorities should of course ensure that their own records are kept up to date in this respect.

In addition, authorities are also asked, whenever they make Orders which would result in a footpath or bridleway being created on land adjacent to operational railway lines, to notify Network Rail of the making and confirmation of the Order and to provide them with a copy of the Order.

## Annex 2

### Additional Sources of Information

#### **Natural Resources Wales**

- *‘Recreation and Access policy advice and guidance’ (available on its website)*
- *‘By all reasonable means: Inclusive access to the outdoors’*
- *‘A guide to definitive maps and changes to public rights of way’*
- *The Countryside Code*

#### **DEFRA**

- *‘Authorising structures (gaps, gates & stiles) on rights of way’*
- *‘Making the best of byways’*
- *‘Regulating the use of motor vehicles on public rights of way and off road’*
- *‘Guidance for local authorities on implementing the biodiversity duty’*

#### **The Home Office**

- *‘Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory guidance for frontline professionals’*

#### **Planning Inspectorate**

- *Rights of Way (section on its website)*

#### **Institute for Public Rights of Way and Access Management (including Rights of Way Review committee – Practice guidance notes)**

- *Institute for Public Rights of Way and Access Management website*

#### **Non-native Species Secretariat**

- *Non-native species website*

#### **Health and Safety Executive**

- *Agriculture Information Sheet No 17EW(rev1)*

#### **Pittecroft Trust**

- *Understanding the Defra guidance on Public Path Structures and Gaps, Gates, Stiles. A guide to the British Standard BS5709:2006*

#### **Welsh Government guidance**

- *Environment Act (Wales)*

## Annex 3

### Draft Model 147ZA Agreement

(This does not form part of the statutory guidance)

#### FOR INFORMATION

These notes are included to provide an explanation of section 147ZA of the Highways Act 1980. They do not form part of the agreement.

1. The purpose of section 147ZA is to enable agreements to be made between local authorities and landowners, occupiers and lessees for the replacement of structures across public footpaths and bridleways, such as stiles and gates, with new structures that will be easier for the public to use, and in particular for those who have disabilities or mobility issues.
2. The agreement provides for the respective responsibilities of the owner, etc and the authority for the design and erection of the new structure and its subsequent maintenance.
3. Section 147ZA also provides that the owner's right to erect and maintain a structure across the path or way will apply to the new structure, and cease to apply to the former structure, on such date as is specified in the agreement, or, if no date is specified, one year after the date of the agreement. However, if any conditions in the agreement are not adhered to, the right to erect and maintain the new structure will cease to apply unless and until the conditions are complied with, and the authority may require the structure to be removed.
4. **The model agreement may prove useful to authorities, owners, lessees and occupiers, but is only a suggested template and should be tailored to meet individual circumstances. Authorities, owners, lessees and occupiers should take legal advice before entering into an agreement under section 147ZA.**

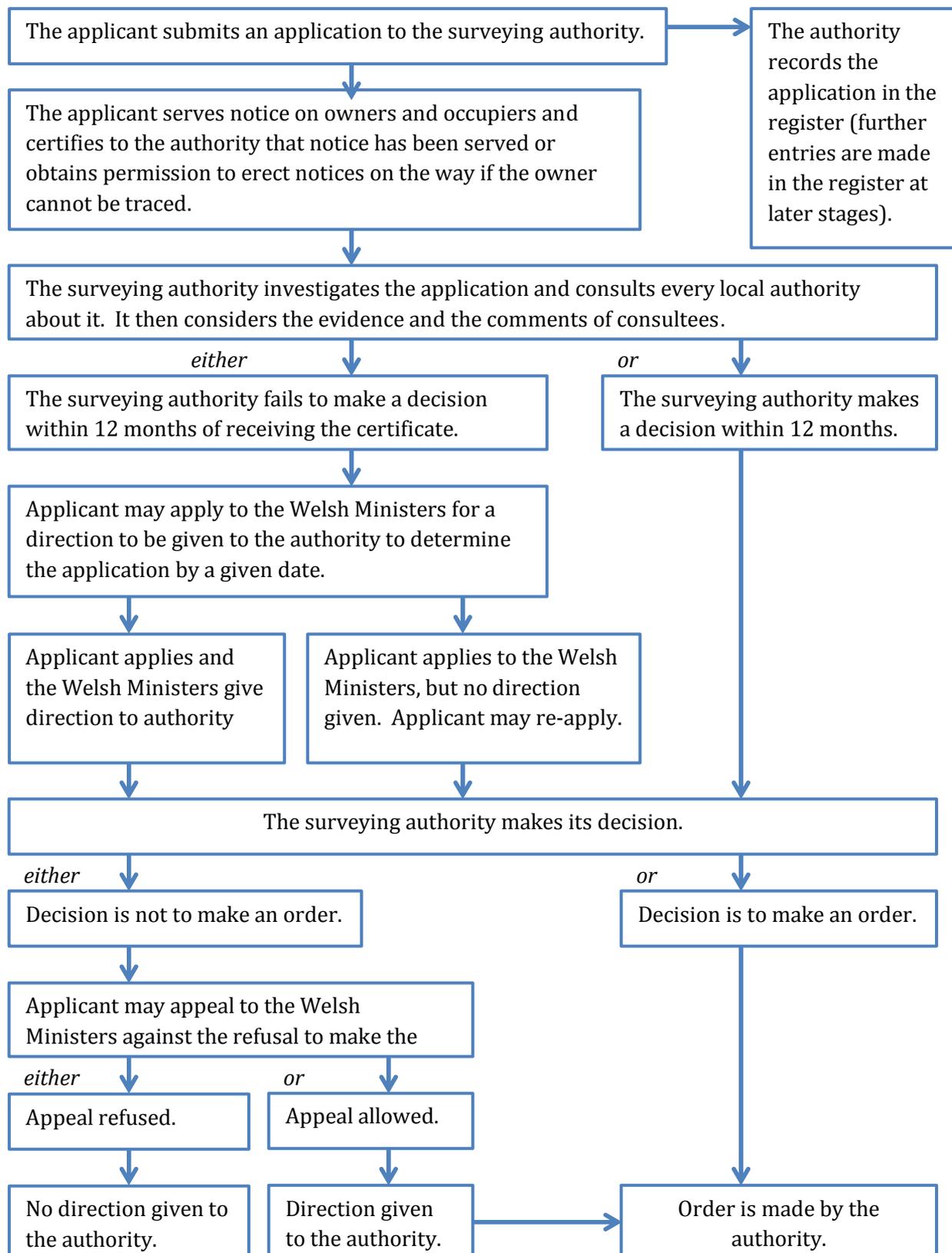
<b>PROPOSED CONTENT OF AGREEMENT</b> <i>Items in italics are where details have to be added, or where one or more options are to be deleted as appropriate.</i>	<b>Notes</b>
1. This is an agreement between the Authority and the <i>[owner] [lessee] [occupier]</i> under section 147ZA of the Highways Act 1980 for the purpose of <i>[summary of the purpose of the agreement, e.g. replacing a stile on Hemsby footpath 4 with a kissing gate]</i> .	Included to provide a summary of what the agreement is about, to state the parties to the agreement and to make it clear that it is an agreement under section 147ZA.

<p>2. In this Agreement, the following definitions apply and terms not defined have the meaning assigned to them in the Highways Act 1980:</p> <p>“Authority” means the local highway authority or other competent authority, or any other authority acting under an agreement with the local highway authority or other competent authority which provides for that authority to be able to enter into an agreement under section 147ZA;</p> <p>“existing structure” means the <i>[description of the structure]</i> at <i>[description of location, including a grid reference]</i> and shown as point A on the plan attached to this Agreement;</p> <p>“lessee” means <i>[details of lessee]</i>;</p> <p>“new structure” means the <i>[description of the structure]</i> at <i>[description of location, including a grid reference]</i> and shown as point A on the plan attached to this Agreement;</p> <p>“occupier” means <i>[details of occupier]</i>;</p> <p>“owner” means <i>[details of owner]</i>;</p> <p>“qualifying works” mean all the works as described in the Schedule to the Agreement necessary to remove the existing structure and erect in its place the new structure;</p> <p>“right of way” means the <i>[footpath]</i> <i>[bridleway]</i> on which the existing structure is located, <i>and which is recorded in the definitive map and statement for [name of definitive map] as [parish name and number of right of way].</i></p> <p>3. The right of way is subject to a limitation whereby the owner/lessee/occupier has the right to erect and maintain the existing structure <i>[by virtue of an authorisation granted on (date) by (name of authority which granted the authorisation)].</i></p>	<p>Makes it clear that any terms not defined take any definition given to them in the Highways Act 1980.</p> <p>Allows for there to be an agent authority which has power under its agency agreement to enter into section 147ZA agreements.</p> <p>Include where there is a lessee.</p> <p>Include where there is an occupier separate from the owner.</p> <p>Include the definitive map reference for the right of way where it is so recorded.</p> <p>Give details of the section 147 authorisation if there is one.</p>
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<p>4. The owner/lessee/occupier agrees to undertake the qualifying works within three months of the date of this Agreement and to notify the authority when the works have been completed.</p> <p>5. The Authority agrees to reimburse the owner/lessee/occupier for expenses reasonably incurred in undertaking the cost of the qualifying works.</p> <p>6. <i>For the purposes of subsection (5) of section 147ZA the effective date of this Agreement is [insert date].</i></p> <p>7. <i>The [owner], [lessee] and [occupier] have consented to the making of this Agreement.</i></p> <p>8. <i>The following conditions apply to this Agreement: [specify conditions]</i></p> <p>9. <i>The new structure is deemed to be erected under this Agreement only if the conditions specified in clause 8 are being complied with.</i></p> <p>Signed: <i>[by parties to the agreement]</i></p> <p>Date:</p>	<p>Rewrite this and the next clause as appropriate if the Authority is to undertake the works and the owner/lessee/occupier is to meet any of the costs.</p> <p>Add additional text if desired to provide for inspection by the Authority prior to any payment being made.</p> <p>Use this clause only if the effective date is to be specified: the default is one year from the date of the agreement.</p> <p>Include if there is an occupier or lessee separate from the owner, and delete as appropriate.</p> <p>Include if conditions are to be specified (subsections (3) and (4)).</p> <p>Include if conditions are specified.</p>
<p><b>PLAN</b> Showing the path or way and, as point A, the location of the existing structure.</p>	
<p><b>SCHEDULE</b> Description of qualifying works.</p>	

## Annex 4

### Flowchart: Applications for Modification Orders



## Annex 5

### Flowchart: Procedure for Modification and Public Path Orders

