

Who's responsible?

County, District and Parish Councils

Landowners

Path users



Who's Responsible?

This chapter gives an overview of the rights and responsibilities of those involved with public Rights of Way:

- Users
- Land owners, farmers and developers
- Local Access Forum
- Parish Councils
- District and Borough Councils
- National Park Authority
- County Council and Unitary Authorities
- Defra, Natural England and the Planning Inspectorate.



Two terms need to be thought about before we get into the detail of who can or should do what. These are **Duties** and **Powers**. Simple definitions for the purpose of this chapter are:

- **'Duties'** – actions that a body has a legal obligation to carry out; there is no element of discretion, the law says that they must be done, otherwise a body or individual can be called to account.
- **'Powers'** – actions that a body can choose to do; it is up to the individual organisation to decide whether a particular action is necessary or desirable and whether it is justified and achievable. Unlike **Duties** these entitlements are discretionary.



The table overleaf provides a quick reference guide to the 'Duties' and 'Powers' that those involved in Rights of Way have. A more in-depth exploration of each is presented throughout the rest of this chapter.

For the purpose of conciseness when Parish Councils are referred to this also includes Town Councils.

Summary

'Duties' are indicated by a black square - ■ 'Powers' are shown by a red dot - ●

	Users	Land Owner	Parish Councils	District Councils	National Park Authority	County & Unitary	Defra	Natural England
Definitive Map and Statement								
To publish and keep the map up to date						■		
To hold copies of the map and orders			●	●	●	■		
To apply for changes to the map through DMMO and PPO	●	●	●	●	●	●		
To make orders to change the map based on evidence (DMMO) or policy (PPO)						■		
To keep a register of applications for changes						■		
To apply for changes to enable development to take place	●	●	●					
To make orders to enable development related changes				●	●	● ⁵		
To object to an order to change the map	●	●	●	●	●	●		
Hold public inquiries etc. to determine contested changes.							●	
Other Legal Records								
To apply to record a Common, or Town and Village Green	●	●	●	●	●	●		
To keep a register of Commons, or Town and Village Greens						■		
Draw up and maintain a map of access land								■
Protecting Paths								
To ensure that paths are free from obstructions and misleading signs		■						
To assert and protect the rights of the public			●	●	●	■		
To require the removal of obstructions and the abatement of nuisances, e.g. Barbed wire	●		●	●		■		
To take action to prevent or remove misleading signs			●			■		
Take action to enforce re-instatement after ploughing or secure removal of crops	●		●	●	●	■		
To make Traffic Regulation Orders				●	●	●		

⁵ Unitary Authorities.

	Users	Land Owner	Parish Councils	District Councils	National Park Authority	County & Unitary	Defra	Natural England
Maintaining Paths								
Maintain local paths			●	●	●	■		
Ensure stiles and gates are in good condition		■				●		
To keep back overgrowth growing in from the side or above	● 6	■	●	●		●		
To keep down undergrowth vegetation growing up from the surface	● 7		●			■		
To maintain bridges		■ ⁸				■		
To maintain surfacing and/or drainage			●			■		
To provide signposting from a road			●	●	●	■		
To provide other signposting and waymarking			●	●	●	●		
To authorise temporary diversions						●		
Removing litter or fly-tipping				■				

Improving Paths and Networks								
To prepare Countryside Access Plans and consult with various partners						■		
To provide new paths, both permissive and public Rights of Way		●				●		
To provide lighting			●					
To provide litter bins			●	●	●	●		
To provide safety barriers			●			●		
To provide seats and shelters			●			●		
Other improvements			●			●		

Access Land								
Maintain a website with restrictions on access								■
To exclude access		●						●
To dedicate access land		●						

^{6,7} Only if it constitutes an obstruction to the path.

⁸ In general bridges are the responsibility of the County Council, however the land owner may also bear some responsibility.

Users – walkers, horse riders, cyclists, carriage drivers and motorists

Duties: Not surprisingly, users have no specific duties with respect to managing Rights of Way; their only ‘duties’ are to contribute to the upkeep of the network through their taxes and to obey the laws of the land.

- **Duty of care.** All users owe each other a duty of care but some users, especially motor vehicle users, have further legal duties imposed on them. Cyclists have a duty to give way to walkers and horses, and motor vehicles must give way to all other users.
- **Motor vehicles.** Motor vehicles can legally be used by the public on byways open to all traffic unless the path is subject to a Traffic Regulation Order (TRO). A byway is just as much a highway as the M3 motorway, and the rules of the road apply; drivers must be licensed and insured, and vehicles must be fully roadworthy, registered and taxed.

Powers:

- **Right to use a path.** Users have the right to pass and re-pass along the highway, using whatever means is allowed on that type of highway. Users can rest along the way and, perhaps, eat a bite of lunch (But, there is no right to specifically go out to picnic on a public path). If a user goes beyond their right to pass and re-pass they can be classed as a trespasser. You may take with you items that might be considered to be a ‘natural accompaniment’ to your journey, including dogs (under close control) and pushchairs.
- **Removal of obstructions.** The powers of individual users to directly affect path conditions are restricted to the ancient, limited, but still significant, power of abatement. Abatement is the common law right to take action to remove a nuisance that is affecting the exercise of a right. The action taken can only be sufficient to enable the right to be conveniently exercised. In practical terms this means that if, say, a walker comes across a path blocked by excessive overgrowth they have the power to remove so much of the overgrowth as is necessary to get past.

If they can't get through, they also have the right to detour around the obstruction. Although the bulk of the obstruction may remain, once a person can conveniently carry on their journey they no longer have the power to remove material and further action could even constitute criminal damage.

Users may take legal action to get obstructions removed. A user can apply to the magistrates' court to compel an authority to prevent the obstruction of a highway, and can also take action directly against the land owner.

- **Path maintenance.** Where a path surface is out of repair (rather than obstructed) a user can take action to compel the County Council to repair the path by serving a section 56 notice. This sort of action should never be needed and should be seen as a last resort. Whenever a path is out of repair it should be reported to the County Council who will ensure that repairs are made as soon as possible within the constraints of the County's priority guidelines.
- **Applications to record a Right of Way.** With respect to the recording of Rights of Way; anybody has the right to present evidence to the Highway Authority that an unrecorded Right of Way exists and to apply to have that path recorded on the Definitive Map and Statement.

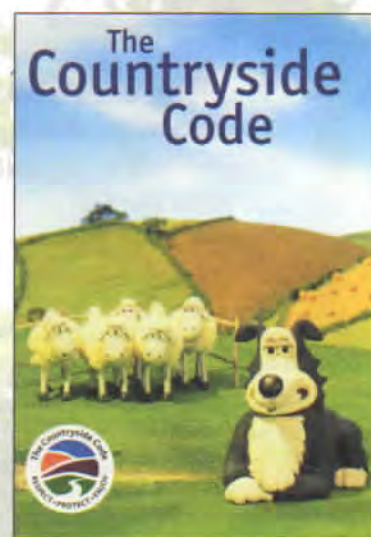
Likewise users can apply to record a Common, or Town and Village Green.

Good Practice: Users must exercise their rights considerately, and this means following the Countryside Code. The Code has five key messages for the public:

- Be safe – plan ahead and follow any signs.
- Leave gates and property as you find them.
- Protect plants and animals, and take your litter home.
- Keep dogs under close control.
- Consider other people.

The Code gives more detailed advice under each of these headings. A copy of the Code is included as an insert at the back of this Guide.

More information on the countryside code can be found at, www.countrysideaccess.gov.uk/things_to_know/countryside_code



Landowners and farmers

Duties: The primary duty of land managers (owners, farmers or developers) is not to interfere with the public's rights of access, whether on a public Right of Way or access land (unless formally closed). They mustn't obstruct a path (or entry to access land) either physically (for example by fences, locked gates or parked machinery), by intimidation (including that by aggressive animals kept near to the path) or by discouragement, such as erecting misleading signs.

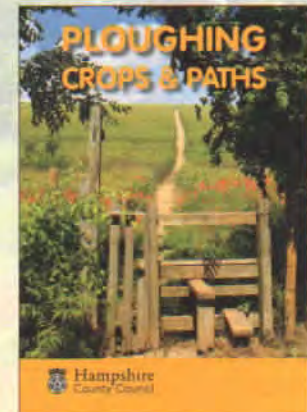
- **Safety of the public.** All land managers owe a duty of care to people using their land. Known hazards must be kept away from the public and adequate warnings given.
- **Overgrowth of vegetation.** A landowner must ensure that vegetation from land on either side of a Right of Way (overgrowth) does not overhang or encroach onto the public path. If a path is enclosed by hedges, or is next to a hedge or woodland, regular pruning of vegetation will be an ongoing responsibility on the part of the landowner or occupier of the land on which they are planted. Care should also be taken to ensure that there is adequate headroom for users of the path. In the case of a bridleway, clear headroom of at least 3 metres must be maintained. Any tree falling across a Right of Way should be cleared by the owner of the tree.
- **Maintenance of gates and stiles.** Landowners and occupiers are responsible for the maintenance of stiles, gates and other structures on Rights of Way unless they have been erected by us. They should be repaired or replaced when necessary so that they are safe and easy to use.
- **Installing new gates and stiles.** Land managers must get authorisation from the County Council before erecting any gate or stile across a public Right of Way where there previously wasn't one. Authorisation can only be given if the structure is needed for the purposes of keeping livestock. We try to follow the 'least restrictive access' principles and our preference is for a gap or a gate before a stile. Gates suitable for wheelchair, power scooter and pushchair are available, but there is no obligation for these to be provided by a landowner. As a County Council, however, we encourage landowners to consider access for those with mobility problems when replacing gates and stiles. Similarly, there is no obligation on the landowner to make allowance for dogs to get through stiles.

Powers:

- **Ploughing** or otherwise disturbing the surface of a path makes it less convenient to users. Farmers should avoid ploughing or disturbing a footpath or bridleway, unless it is inconvenient to do so. If ploughing cannot be avoided farmers must reinstate the surface and mark the line of the path within 14 days of first ploughing or within 24 hours of any further work. This is usually done by rolling the ground and staking the line of the path. There is no right to plough a field-edge or 'headland' path.

Any path running through a field of crops must be kept clear of growing crops across its full width. The width of a Right of Way may be recorded on the Definitive Map and Statement however where this is not the case adequate widths should be maintained:

- ◇ Cross-field footpaths must be at least 1 metre wide.
- ◇ Cross-field bridleways should be 2 metres wide.
- ◇ Cross-field byways should be at least 3 metres wide and must never be ploughed.
- ◇ Field edge footpaths should be at least 1.5 metres wide (but we prefer to see at least 1.8m).
- ◇ Field edge bridleways should be at least 3 metres wide.
- ◇ And field-edge byways should be at least 3 metres wide.



We have published a practical guide for landowners and tenants – 'Ploughing crops & paths'. The leaflet can be down-loaded at, www3.hants.gov.uk/ploughingleaflet.pdf

The maintenance of free passage along public Rights of Way is a key farm activity that falls within the cross-compliance rules of the Single Payment Scheme (SPS) which provides subsidy to farmers. The County Council, as a relevant enforcement body, is encouraged to report Good Agricultural & Environmental Conditions (GAEC) breaches to the Rural Payments Agency ('RPA'), particularly those which breach GAEC 8 – Public Rights of Way. The RPA will then consider a reduction in the SPS Payment.

- **Livestock.** Specific rules relate to bulls: it is an offence to keep any bull in a field crossed by a Right of Way unless i) the animal is under 10 months old or ii) it is not of a recognised dairy breed and is at large with cows or heifers. Land managers have a responsibility not to put at risk the health and safety of the general public.
- **Restrictions to access land.** Land managers have the power to temporarily close access land – but only subject to strict limitations. Closure is restricted to 28 days per year, excludes bank holidays and cannot include Saturdays or Sundays in the summer. Before



any access land can be closed notice must be given to the National Park Authority, in the New Forest (and the South Downs National Park when designated), and to Natural England elsewhere. The power to exclude people can be limited to certain areas or to certain users, for example, it can be used to exclude people with dogs. The power to close access land does not affect any public Rights of Way that cross the land – they must remain open unless closed through a separate process.

- **Other activities.** Land ownership or tenancy can give land managers all sorts of rights to enjoy their property and, of course, they can do things that, if done by the public, would be a trespass against the owner. So, for example, a land manager, or their invited guests, can drive vehicles on a footpath crossing that land. But, the land manager generally has no right to do anything that interferes with the rights of the public.
- **Protection from future Rights of Way claims.** If a landowner wishes to protect themselves against future claims for public Rights of Way to be recorded across their land, they have the right to make a statutory declaration⁹ (sometimes also known as a 'Section 31(6) declaration') to us about which paths they accept are public and recording their lack of intention to dedicate any others. As explained in the previous chapter land owners have the right to apply for a Public Path Order to create, extinguish or divert a path.
- **Improving the surface of a path.** Land managers have the right to improve the surface of a path, for example if a footpath also serves as a driveway, but this must be with our prior consent.

Local Access Forums

Each County Council, Unitary Council and National Park Authority must by law set up a Local Access Forum (LAF). In Hampshire we currently have 2 forums which together cover the County. Hampshire Countryside Access Forum (HCAF) is the joint forum for Hampshire (excluding the New Forest), Southampton and Portsmouth. New Forest Access Forum (NFAF) covers the New Forest and South West Hampshire. In both cases the members are local people, balanced between those who use the countryside and those who have the responsibility for the management of the land. These forums seek ways to improve access for all users of the countryside whilst encouraging wildlife and enabling landowners to make use of their land.

Their role is to provide advice to all local organisations in countryside access. They chiefly advise County and City Councils, and the National Park Authority. They sometimes advise Parish and Town Councils, and other organisations (Forestry Commission). The LAF has the right to have their views given due regard by these bodies. Organisations do not have to follow the advice of the LAF but, when it is offered, they must consider it before reaching a decision.

In Hampshire, the Forums have actively sought to assist Parish Councils through, for example, helping to establish the Small Grants Scheme, running conferences for Parish Councils and supporting this guide.



Further details regarding HCAF can be found at www.countrysideaccessforum.hants.org.uk
To contact the officer responsible for its organisation call 01962 847221.

For information on the NFAF go to www.newforestnpa.gov.uk. To contact the forum call 01590 646669, or email access.forum@newforestnpa.gov.uk

⁹ Under section 31(6) Highways Act 1980.

Parish and Town Councils

In the second chapter, Legal Records of Access, we briefly reviewed the history of parishes maintaining and recording the Rights of Way network. During the twentieth century most of these parish duties pertaining to highways became the responsibility of County Councils; but the highways history has left parishes with numerous *powers*. Use of these may be discretionary but, if they so wish, **parishes can still play a key role in maintaining their local Rights of Way**. The County Council views



Parish Councils' main responsibilities as being to ensure that the views of local people are represented on matters such as Public Path Orders (diversions and extinguishments); to protect the network for the benefit of local people; and to seek opportunities to improve paths and the network to fit the needs of the parish.

Duties: Parish Councils no longer have any duties with respect to Rights of Way unless they are the land owners.

Powers: In contrast, the legacy of centuries of highways management is that Parish Councils still have many powers that they can choose to exercise to improve their local paths.

- **Recording of Rights of Way.**
 - ◊ To keep available for public inspection a copy of the Definitive Map and Statement for the parish, together with copies of any orders that have made changes since the map was last published.
 - ◊ To apply to add paths to the map and to present evidence to support the application
- **Protecting Rights of Way.**
 - ◊ To make representations to us that a path has been illegally obstructed or stopped-up. We must act on this representation unless we think that it is mistaken.
 - ◊ To veto any proposals that we might make, but that you do not agree with, to divert or stop-up a highway, through the magistrates' court.
 - ◊ To prosecute anyone who willfully obstructs a Right of Way in the parish.
 - ◊ To prosecute a farmer who grows crops on a Right of Way.
 - ◊ To prosecute a farmer who doesn't reinstate a path after ploughing.
- **Maintaining Rights of Way.**
 - ◊ To maintain any footpath, bridleway or restricted byway in the parish.
 - ◊ To put up notices or signs to warn users of any dangers on local paths.
 - ◊ To signpost a Right of Way where it leaves a road – or insist the County Council do so.
 - ◊ To waymark Rights of Way in the parish.

- **Improving Rights of Way.**

- ◇ To install lighting on any footpath or bridleway in the parish where you think that it is needed.
- ◇ To install seats and shelters on any road in the parish, and with the landowners consent at the side of a Right of Way.¹⁰
- ◇ With our approval, the Parish Council has the power to provide litter bins. Where it does so, this generates a duty to make arrangements for their regular emptying.
- ◇ To create new paths in the parish and adjoining parishes by agreement with the landowner.
- ◇ To incur expenditure in the interests of the area or the inhabitants, including improvements to Rights of Way.¹¹

- **To be consulted about changes to Rights of Way.**

- ◇ Being consulted before the County Council make a Definitive Map Modification Order or a Public Path Order in the parish.
- ◇ Have the right to object to a Public Path Order or a Definitive Map Modification Order (the authority, have a duty to notify you whenever we make or confirm an order affecting your parish).
- ◇ Parish Councils have the right to be consulted during the drawing up of Rights of Way Improvement Plans – or ‘Countryside Access Plans’ as we prefer to call them. These have now been published and most parishes did take the opportunity to comment on the draft plans. The plans will all be reviewed within 10 years (see chapter 5, Improving Local Access).
- ◇ Very importantly, the Parish Council is a consultee for planning proposals, some of which may affect Rights of Way. Paths can be diverted or extinguished if it is necessary for a proposed development to go ahead and so it is important that full consideration is given to the effect of development on local paths before planning permission is granted. We would urge all Parish Councils to carefully consider the impact of any development on their local paths and to alert the planning authority (District Council) to any issues or concerns that they are aware of. Similarly, it may be that a proposed development could offer the opportunity for access improvements, perhaps through new paths, upgrading existing ones or creating new areas of public open space; the Parish Council should work with the planning authority to take advantage of such opportunities.
- ◇ The Parish Council can apply in its own right for an area of land to be recognised as a Town or Village Green. Where the Parish Council owns land, it can dedicate that land as a Town or Village Green.



¹⁰ Section 1 Parish Councils Act, 1957

¹¹ Section 137 Local Government Act, 1972

District and Borough Councils

Unitary Authorities, such as Portsmouth City Council and Southampton City Council, have similar duties and powers to the County Council. These are dealt with later in this chapter. District and Borough Councils (including Winchester City Council) have wide ranging powers as described below. For brevity we will use the term District to describe both District and Borough Councils.

Duties: The Districts have no countryside access or Rights of Way maintenance duties. However, they can choose to take on some of the County Council's duties under an 'agency agreement'. There are presently agency agreements with some District Councils to deliver Traffic Management on Highways and Rights of Way.

An important duty for District Councils is that of keeping Rights of Way clean and clear of litter and refuse, including fly-tipping and abandoned vehicles.

Powers: Generally, Districts have powers to:

- Create new paths by agreement or by order.
- Make orders to divert or extinguish paths.
- Require the cutting back of overhanging vegetation.
- Require the removal or shielding of barbed wire where this is a nuisance on a path.
- Require the fencing off of land that may be a danger to the public.
- Install litter bins on Rights of Way, with our consent, (arrangements must be made for their emptying and cleaning).
- The District Councils can claim maintenance powers on publicly maintainable paths.¹² When they do so, they must keep a list available showing all of the paths that they look after. The Districts can claim reimbursement of costs from the County Council.
- District Councils are the planning authorities and responsible for local development plans. They have the right to include proposals for Rights of Way within these plans. As District Councils were important partners in the development of Countryside Access Plans, it is expected that improvements to local Rights of Way will be strongly represented within local development plans.



National Park Authorities

Hampshire includes much of the New Forest National Park and will include the western parts of the South Downs National Park when the designation order is confirmed (possibly 2009). Each park is run by a National Park Authority (NPA); these are primarily planning authorities but can also exercise powers over Rights of Way and are also designated as 'access authorities' for the management of access land.

¹² Section 42 Highways Act 1980

Duties: The NPA has no duties with respect to public Rights of Way.

Powers:

- **Make changes to Rights of Way.** The NPA has the power to make Public Path Orders needed to enable development proposals to take place. It also has the power to enter into Creation Agreements.
- **Traffic Regulation Orders.** NPAs have recently acquired the power to make Traffic Regulation Orders on Rights of Way.¹³
- **Access Land.** The Countryside & Rights of Way Act 2000 granted the NPAs powers with respect to access land. These include the ability to enter into agreements with landowners for the improvement of entry points or paths to access land; to impose restrictions on access for safety purposes or fire prevention; to impose restrictions on access for conservation purposes.
- **Maintaining Rights of Way.** The NPAs can, if they wish, increase their powers by exercising their right to enter into an agreement with the Highway Authority to take over Rights of Way functions within their park. At the moment, the New Forest NPA has not taken on any Rights of Way functions and these remain with us at the County Council. The NPA has to produce a National Park Plan which is the management plan for the park and includes proposals for managing countryside access.
- **Planning proposals.** In common with the Districts, the NPA has a strong planning function and so is in a pivotal position to influence the impact of development, good and bad, on public Rights of Way and countryside access.



County Council and Unitary Authorities

Hampshire County Council is the Highway Authority for most of the County, including the National Park area. However, there are two 'Unitary Authorities' that are the Highway Authorities for their area; Portsmouth City Council and Southampton City Council.

As this guide is to be used mainly by Parish and Town Councils, for ease of use we refer to the Highway Authority as the County Council.

Duties:

- To assert and protect the rights of the public to use and enjoy all their highways, including Rights of Way, and to prevent obstruction of their use.
- To maintain the surface of Rights of Way in a suitable condition for the normal public traffic using them. For example, footpaths for walkers.
- To insist that paths disturbed by ploughing or obstructed by crops are reinstated, and to take action if this is not completed.

¹³ Section 72 Natural Environment and Rural Communities Act 2006

- To signpost Rights of Way where they leave a road and to waymark them where needed to help people follow a route.
- To take legal action against anyone who installs a sign on a Right of Way aimed to mislead or deter users.
- To prepare and review a Rights of Way Improvement Plan (Countryside Access Plan).
- To keep the Definitive Map and Statement under continuous review and to make it available for public inspection.
- To keep a register of applications for Definitive Map Modification Orders.
- To keep a register of Commons, and of Town and Village Greens.
- To keep an up to date list of highways maintainable at public expense.

Powers. These are even more numerous. But the main powers are:

- To create paths by agreement or order.
- To construct bridges.
- To complete necessary works to drain Rights of Way.
- To make orders to divert or extinguish paths.
- To authorise new stiles or gates – and to order the removal of those that aren't authorised.
- To install and keep in good condition signposts and waymarks.
- To make Definitive Map Modification Orders and Public Path Orders.
- To make Traffic Regulation Orders.
- To insist on the removal of an obstruction on a Right of Way.
- To enter into an agreement with land owners to improve or provide entry onto access land.
- The Highway Authority is required to employ sufficient staff to carry out its legal duties but has the right to organise this work and allocate resources as it sees fit.



Did you know that the maintenance and replacement of gates and stiles is the responsibility of the landowner, and not the County Council (unless we are the land owner).

Defra, Natural England and the Planning Inspectorate

The Department of Environment Food and Rural Affairs (Defra) is the Government department most involved with Rights of Way and access to the countryside. It is responsible for drawing up and issuing guidance on the legislation and acts as sponsoring organisation for the other main bodies involved, particularly Natural England and the Planning Inspectorate.

Natural England acts as an executive agent for Defra, developing policies and projects to deliver the department's goals across England. Natural England also has regulatory functions that impact upon Rights of Way work, particularly with respect to protected species and habitats, including sites of special scientific interest and other designated sites. Natural England has **duties** relating to access land principally preparing, reviewing and maintaining maps of open country, and maintaining a web site showing areas of land subject to temporary closure.

Natural England also has **powers** relating to access land, including the power to restrict access for the purposes of protecting the conservation interest of a site or the prevention of fire.

If objections are received regarding a DMMO, the Planning Inspectorate (PINS) will decide in each case whether to examine the order by written representations, hearings or public inquiries. An inspector will be appointed to hear the evidence and reach a decision

