

# Rights of Way - Frequently asked questions

## 1. What are Public Rights of Way?

### Definitions:

All public rights of way are highways in law, a defined route over which the public have a right to pass and re-pass. In Flintshire there are 1056.2 km of public rights of way.

**Public footpath** (963.645km): a highway over which there is a right of way on foot only. These generally do not include the footway alongside a public road.

**Public bridleway** (109.046km): a highway over which there is a right of way on foot, on horseback or to lead a horse with or without the right to drive animals of any description along the highway. Bicyclists also have the right to use public bridleways, but they must give way to pedestrians and horse-riders. It is a criminal offence to drive a mechanically propelled vehicle on public footpaths and public bridleways unless: you are the landowner; you have the express consent of the landowner; or you have a private vehicular right of way that runs along the route.

**Byway open to all traffic (BOATs)** (11.917km): a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used. If you use a motorised vehicle on a byway, open to all traffic you must ensure that it is licensed and fit for use on public roads. As the driver, you must be licensed and insured.

## 2. What is the definitive map? / Where can I see the Definitive Map?

The definitive map and statement is the official record of rights of way. It provides conclusive legal evidence of every right of way that is recorded on it.

The 'working copy' contains all the handwritten amendments, incorporating all the legal changes, since the 'relevant date' of the map (31 October 1978). The definitive map is normally available for inspection between 9am and 5pm Monday to Friday at Entrance 3, County Hall, Mold, CH7 6NF. If you make an appointment we can ensure someone will be available to answer your queries (tel. 01352 704612).

## 3. What if I am using a path or way that is not recorded on the definitive map?

Public rights of way may exist that are not recorded on the definitive map; ways recorded as public footpaths may in reality be public bridleways or a right of way may not be in the correct position. Anyone who alleges that the definitive map needs to be amended may apply to the County Council. Applications must be supported by evidence, either documentary (e.g. 'historic' maps) or user evidence (where the public have used the path for many years), or both. The County Council considers all the available evidence before deciding whether to make an order. The process for amending the definitive map is complex, time-consuming, and is open to public objection. You are therefore strongly advised to contact the Right of Way section before deciding whether to make an application.

#### **4. What do I do if someone tries to deter me from using a right of way, threatens, or intimidates me while I am using or attempting to use one?**

You should contact the police. They have powers to deal with these problems. The County Council receives regular requests to extinguish (permanently close) public footpaths and bridleways where there have been problems of anti-social behaviour. We nearly always have to turn them down, because the legal tests for extinguishment orders cannot be met. Please see above.

#### **5. How do I move a public right of way on my land?**

The only way this may be done lawfully is through a public path diversion order. There are a number of conditions that have to be met before an order can be made and there is an elaborate consultation process. The existing route must be kept open and available until any diversion order is brought into force. Orders cost approximately £5000 to process and there is no guarantee of success. For this reason, we would encourage anyone who wishes to apply for a diversion to think very seriously before they do so. Applicants may have to reconsider their proposals if there are any valid objections and they could still be charged some or all of the costs incurred. In many cases the best, if not the only, option is to leave the path where it is. If you would like further information, please contact the Rights of Way section.

#### **6. Can I apply to close a public right of way?**

Permanent closures are known as Extinguishment Orders. Unless an alternative path is provided as a replacement for the path being extinguished, such orders can be highly contentious. We would therefore only consider applications for extinguishments in exceptional circumstances, where there was no other practical option. For instance, some housing estates have been built over public footpaths and bridleways, which have never been formally closed. Although the paths may have not been in use for many years, they do not cease to exist legally. The County Council has successfully extinguished paths in such circumstances. Further details may be obtained for the Rights of Way Section.

#### **7. Who do I need to contact if I wish to install a stile or gate across a public right of way on my land?**

You should contact the Rights of Way Section to see if they can authorise it. There are strict conditions for authorising stiles and gates. The County Council not only has to be sure that the stile/gate will be on agricultural land and is needed to prevent the movement of animals, it also has to consider the needs of people with mobility problems. For this reason, the County Council will be more likely to authorise a gate rather than a stile, provided you cannot leave a gap for the public.

#### **8. What do I do if I want planning permission to build over/across a public right of way?**

Get in touch with the Rights of Way Section immediately. An Order can be made for a footpath or bridleway to be extinguished or diverted to enable development to take place. This may include building or other works for which planning permission has been granted. However, we would always encourage a developer to 'design in' the right of way into the development, so that it becomes incorporated into it. That way a diversion or

extinguishment may be avoided. The outcome of any order is always uncertain and it may mean that permission has been granted but it cannot be implemented. A temporary closure may be required while works take place. Please contact the Rights of Way Section if you think you may need one.

## **9. Who has the responsibility of maintaining Public Rights of Way?**

The duty for keeping public rights of way open and available for the public to use is divided between the county council, as highway authority, and the landowner/occupier of the land. Some examples of those rights and responsibilities are listed below.

**Flintshire County Council** is responsible for:

- asserting and protecting the public's right to use and enjoy any public right of way;
- securing the removal of obstructions (through the courts if necessary) on public rights of way;
- signposting footpaths, bridleways and byways open to all traffic where they leave a metalled road and providing additional waymarking along the way if necessary;
- maintaining and controlling natural vegetation (other than crops) on the surface of rights of way;
- maintaining bridges over natural water courses and ditches;
- authorising the installation of new stiles and gates where they meet the criteria. Where stiles and gates are no longer required they can be removed with the agreement of the Rights of Way Section;
- providing grants to landowners of at least 25% towards the costs incurred in maintaining existing stiles and gates on public right of way on their land;
- preparing and keeping up-to-date the official record of public rights of way – the definitive map and statement.

If you come across any problems affecting a public right of way in Flintshire, please report it to the Rights of Way Section.

**Landowners and occupiers** are responsible for:

- keeping paths free from obstructions such as barbed wire or locked gates;
- cutting back overhanging or encroaching vegetation so that it does not inconvenience anyone;
- making sure that field-edge footpaths, field-edge bridleways and any byways open to all traffic are never ploughed;
- ploughing cross-field footpaths and bridleways only when it is not convenient to avoid doing so and reinstating such footpaths and bridleways 14 days after the first disturbance (ploughing or cultivation) and within 24 hours of any subsequent cultivation;
- keeping rights of way free from crops so that they do not inconvenience users and ensuring that paths over cultivated land remain apparent on the ground;
- maintaining stiles and gates in a safe condition so they are easily used by the public;
- providing adequate bridges where new ditches are made or existing ones widened, with the consent of Flintshire County Council;
- obtaining consent from Flintshire County Council before erecting new stiles and gates;

- never obstruct a right of way or deter the public from using it by, for example, erecting misleading signs;
- not keeping any animals that are known to be dangerous in a field through which a public right of way passes;
- ensuring that no dairy bulls are kept in fields crossed by public rights of way and keeping beef bulls only if they are under 10 months or if they are older than this and are accompanied by cows or heifers.

### **Members of the public**

may:

- pass and re-pass on any public right of way;
- stop to look at the view, take a photograph, sit down to rest, providing you do not cause an obstruction;
- take a pram, pushchair, wheelchair, but expect to encounter stiles on footpaths;
- take a dog, preferably on a lead, but always under proper control;
- take a short route around an illegal obstruction;
- remove an illegal obstacle sufficiently to get past.

may not:

- roam over land at will, deviating from the line of the right of way unless it is to pass an obstruction;
- use a vehicle on a byway if it is not registered, taxed and insured, or ride/pedal/drive recklessly, carelessly or without consideration;
- use public footpaths on bicycle or on horseback (except with permission of the landowner).

Please remember: Always follow the Countryside Code