



FLINTSHIRE COUNTY COUNCIL

PUBLIC RIGHTS OF WAY POLICIES AND PROCEDURES



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Introduction

The Public Rights of Way Network is a priceless asset providing the principal means of access to the countryside for all classes of users to enjoy recreational and physical activities, thus contributing to the health and well-being of future generations. This network also makes an important contribution to accessibility within Towns and Communities.

The management, maintenance, protection and recording of the Public Rights of Way network is a complex area of work for local Authorities and Flintshire County Council, as Highway Authority, has therefore developed a series of Policies and Procedures in order to deliver an effective and consistent Public Rights of Way Service throughout the County to ensure that it becomes more open and accessible to the public.

The provision of the Public Rights of Way function is addressed by a wide range of legislation and associated case law. However, within this legal framework, there is scope for each local Authority to interpret specific aspects of service delivery according to its needs and local circumstances.

These Policies and Procedures will be included on the Flintshire Website and available to users of the Public Rights of Way network and to landowners, in order that there is widespread understanding and transparency about what Flintshire County Council does and how it does it.

Where appropriate the Authority will consider best practice and published guidance notes in the delivery of the service.

STATUS OF ROUTES	NUMBER	LENGTH IN KM
FOOTPATHS		955.2 km
BRIDLEWAYS		114.6 km
BYWAYS		11.9 km
RESTRICTED BYWAYS		

Figures – April 2018

Rights of Way General Information

Duties of the Highway Authority

To erect and maintain signposts where any Footpath (FP) / Bridleway (BR) / Byway Open to All Traffic (BOAT) leaves a metalled road unless agreed with the Parish Council that it is not necessary [Countryside Act 1968 (CA68) s27].

To erect such signposts if in the opinion of the Highway Authority this is required to assist persons unfamiliar with the locality to follow a FP/BR/BOAT [CA68 s27].

To survey new paths agreed by a planning authority [Highways Act 1980 (HA80) s27].

To keep a list of highways maintainable at public expense [HA80 s36].

To maintain highways maintainable at public expense [HA80 s41].

To provide footways by carriageways where necessary or desirable for the safety or accommodation of pedestrians [HA80 s66].

To provide adequate grass or other margins by a carriageway where necessary or desirable for the safety or accommodation of ridden horses [HA80 s71].

To assert and protect the rights of public to the use and enjoyment of any highway including a duty to prevent, as far as possible, the stopping up or obstruction of highways [HA80 s130; amended CROW2000 s63].

To prosecute re: disturbance of surface where desirable in the public interest [HA80 s131A; Inserted by Rights of Way Act 1990 (RWA90) s1].

To enforce provision re: ploughing of footpaths or bridleways [HA80 s134; amended RWA90 s1].
To make orders authorising agricultural works not exceeding 3 months [HA80 s135; amended RWA90 s1].

To remove snow or soil [HA80 s150].

To have regard to the needs of disabled and blind persons in executing street works [HA80 s175A].

To keep the Definitive Map and Statement (DM&S) under continuous review [Wildlife and Countryside Act 1981(WCA81) s53; Modified by Countryside and Rights of Way Act 2000 (CROW2000) s53]

To re-classify Roads Used as Public Paths [WCA81 s54; repealed CROW2000 s47*]

To prepare and publish a Rights of Way Improvement Plan [CROW2000 s60].

To have regard to the needs of people with mobility problems when authorising stiles etc.[CROW2000 s69*].

To establish a Local Access Forum [CROW2000 s94].

Powers of the Highway Authority

To erect/maintain signposts along any FP/BR/BOAT [CA68 s27].

To prosecute if expedient for the promotion and protection of the interests of the inhabitants of the area [Local Government Act 1972 s222].

To create footpaths and bridleways by agreement with compensation or compulsory purchase [HA80 s25/26].

To adopt i.e. become responsible for maintenance of highways by agreement [HA80 s38].

Proceedings for an order to repair highway [HA80 s56].

To improve highways [HA80 s62].

To provide on a footpath safety barriers for safeguarding persons using the highway [HA80 s66; amended CROW2000 s70].

To widen highways [HA80 s72].

To construct a bridge to carry a public path [HA80 s91].

To reconstruct a bridge forming part of a public path [HA80 s92].

To drain highways [HA80 s100].

To make an order stopping up footpath(s) or bridleway(s) [HA80 s118].

To make an order stopping up footpath(s) or bridleway(s) which crosses a railway [HA80 s118A].

To make an order diverting footpath(s) or bridleway(s) [HA80 s119].

To make an order diverting footpath(s) or bridleway(s) which crosses a railway [HA80 s119A].

To remove unauthorised marks [HA80 s132].

To remove structures [HA80 s143].

To require removal or widening of gates [HA80 s145 + s149].

To repair stiles, etc. [HA80 s146].

To authorise the erection of stiles, etc. [HA80 s147; amended CROW2000 s69].

To require cutting or felling of trees or hedges that are overhanging or a danger [HA80 s154; amended CROW2000 s65].

To require removal of barbed wire [HA80 s164].

To require information as to ownership of land [HA80 s297].

To consolidate the Definitive Map (DM) [WCA81 s57].

To appoint wardens [WCA81 s62].

To designate a footpath as a cycle track [Cycle Tracks Act 1984(CTA84) s3].

To provide safety barriers on a cycle track [CTA84 s4].

To make Traffic Regulation Orders [Road Traffic Regulation Act 1984(RTRA84) s1].

To make a temporary Traffic Regulation Order during works [RTRA84 s14].

To require removal of signs [RTRA84 s69].

To enter land in connection with traffic signs [RTRA84 s71].

To stop up or divert footpaths or bridleways if satisfied it is necessary to enable development to be carried out [Town and Country Planning Act 1990 (TCPA90) s257].

To stop up or divert footpaths or bridleways temporarily if satisfied it is necessary to enable minerals to be worked and can be restored [TCPA90 s261].

Miscellaneous Matters

Other matters relevant to the exercise of the Rights of Way function:

Right to ride a non-motorised bicycle on a bridleway [CA68 s30].

Power to obtain particulars of persons interested in land [Local Government (Miscellaneous Provisions) Act 1976 s16].

Presumed dedication of highway after twenty years public use [HA80 s31].

Proceedings for an order against the Highway Authority to repair a highway [HA80 s56].

Power of magistrates to stop up or divert [HA80 s116].

Power of Secretary of State to make rail crossing diversion or stopping up orders [HA80 s120].

Penalty for damaging highway, etc. [HA80 s131].

Penalty for wilful obstruction of highway including interference by crops [HA80 s137].

Power of Magistrates Courts to order offender to remove obstructions [HA80 s137ZA; introduced by CROW2000 s64].

Definitive Map and Statement shall be conclusive evidence as to particulars shown [WCA81 s56].

Prohibition of driving on footpath or bridleway [Road Traffic Act 1988 s34].

Secretary of State's power to stop up or divert any highway if satisfied necessary to enable development to be carried out [TCPA90 s247].

Secretary of State's power to extinguish the right to use vehicles on a highway on application by the local planning authority [TCPA90 s249].

Extinguishment of unrecorded rights of way [CROW2000 s53].

Public Rights of Way Maintenance Priorities

Introduction

The hierarchy sets out the relative importance that the Council will accord this work, falling into 8 broad categories. It was devised to rank highly those issues that were likely to be most urgent: hence, the highest priority given to paths where a serious injury has occurred or it likely to occur. Also ranking highly are those paths that are well used by the public, including Offa's Dyke national Trail and other well-promoted routes, such as those featured in the publication, *Rural Walks in Flintshire*.

Priority no.	Issue
1	Health and Safety issues
2	Volume and degree of usage and potential usage, especially National Trails, national and promoted footpaths and published trails (e.g. the Clwydian Way and the Wales Coastal Path)
3	Ways that are suitable for those who are less agile, wheelchair users and the visually impaired.
4	Multi-use and bridleway circular routes and those identified in liaison with the British Horse Society
5	Walks, rides and other activities for health
6	Link Paths off the National Trail and promoted trails
7	Paths published by community councils, including accesses to school
8	Circular and other routes published by Flintshire County Council, including accesses to school.

Timescales for responding to requests

Written/e-mailed requests from the public will be acknowledged within 5 working days, the aim is to respond in full within 15 working days from the date of receipt.

The response will contain a unique reference number if the communication has been added to the Countryside Access Management system (CAMS) for tracking purposes and the contact details for the Officer responsible for dealing with the issues raised.

Biodiversity Statement

In undertaking all functions relating to Public Rights of Way, regard will be given to Section 6 of the Environment Act (Wales) which places a duty on Public 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'.

Definitive Map Issues

Introduction

The Definitive Map and Statement is a legal document and records the line and legal status of all recorded public rights of way. Public rights of way are highways over which members of the public have the legal right of passage across someone else's land.

If a public right of way is included on a Definitive Map, it is conclusive evidence, in law, that the public have the right of passage, even though there may not be any visible evidence on the ground that a right of way exists. The Statement that accompanies the Definitive Map is a brief written description of the recorded public right of way.

The Authority has a duty to keep this record under continual review by processing modification orders and consolidating the map and statement at regular intervals.

There are four types of public right of way recorded on the current Definitive Map and Statement:

<i>Public Footpath</i>	The right of passage is on foot only. A dog is considered as a usual accompaniment, but must be on a lead or under close control at all times. A pram is also considered to be a usual accompaniment, if the surface is suitable. Footpaths may be waymarked with yellow arrows.
<i>Public Bridleway</i>	The right of passage is on foot, bicycle or on horseback. Bridleways may be waymarked with blue arrows.
<i>Byway Open to All Traffic</i>	The right of passage is on foot, bicycle, on horseback or By motor vehicle. Byways may be waymarked with red arrows.
<i>Restricted Byway</i>	The right of passage is on foot, bicycle, on horseback or horse-drawn vehicles. Restricted Byways may be waymarked with burgundy arrows.

The hierarchy setting out the relative importance the Council will attach to public path and definitive map orders falls into seven categories, with 'Number One' the highest priority, 'Number Two' the second, and so on. It was devised to rank highly those issues that were likely to be most urgent: hence, the highest priority given to paths that are in imminent danger of being 'lost' through development and schemes that have been targeted for grant-aid. Also ranking highly are those paths that have been obstructed by long-term residential development. The footpaths may have not been open to the public for many years, but they still legally exist and can act as a blight on any potential property sale.

More consideration will be given to ways that, once opened, will lead to wider improvements to the rights of way by, for example, making a greater length of PROW available to the public or by increasing accessibility for other classes of users, such as horse-riders and cyclists and those with mobility problems.

Priority no.	Response/ action
1	Ways that are in danger of being lost through imminent development (i.e. at the planning application stage)
2	Orders affecting ways that are targeted for external funds, whose expenditure is time-limited and where the proposals are achievable within that time frame.
3	Path(s) that are obstructed by housing, which require an order or orders to resolve the situation.
4	Applications for modification orders
5	Mapping anomalies
6	Public path orders that are wholly or primarily in the public's interest
7	Public path orders that are wholly or predominantly for the benefit of private individuals

Anomalies

Policy

Occurrences of error or irregularity on the Definitive Map and Statement will be investigated and a resolution sought which benefits the network and the implementation of the Rights of Way Improvement Plan 2018 – 2028 (ROWIP). However, due to the often complex history of such anomalies, combined with limited staff capacity, this area of work will be given low priority unless linked to other initiatives.

Procedure

Once an anomaly is identified the details will be recorded and entered onto the digital copy of the Definitive Map. The Authority will check these records for possible resolution prior to any Public Path Order or improvement scheme being considered.

Authorising Gates/Stiles

Policy

The Authority will only authorise the installation of gates and stiles for stock control purposes. The Authority takes the view that any gate/stile present at the time of the 100% condition survey of 2010 is authorised. New infrastructure will be recorded on the consolidated Definitive Map and Statement.

Procedure

If the Authority is providing the gate/stile, it will be to the current British Standard. The Authority will issue an approval decision by letter. If the request is approved, the details of the new gate/stile will be recorded on the Countryside Access Management System.

Charges

Policy

The Authority will seek to recover all costs from the Applicants except in exceptional circumstances, such as correcting historical errors or when the landowner provides a series of improvements to the network.

The Policy of the Authority is to make an appropriate charge for certain types of legal orders with a 3% inflation rise each year:

- Temporary closures and extensions by Order. £1,670.00
- Closure by notice. £500.00
- Permanent closures and diversions £1,500.00 plus advert cost
- Follow up Property Search queries £70.00 per request
- Authorisation for Rallies £100.00 per request
- Landowners who require orders to be made which are primarily for their own benefit will be charged the full cost of the order. However If the change to the path in question has significant public benefit, then the Council may decide to share the cost of making the order.

Consolidations

Policy

The Definitive Map and Statement will be reviewed at regular intervals and a Consolidation Order will be made at 10 yearly intervals following the adoption of the ROWIP 2018-2028. The next consolidation process will commence following the adoption of the ROWIP 2018-2028.

Consultation Process

Policy

During the Order-making process the Authority will consult with the Town/Community Council and local Council representative for a 6 week period. This may be extended in exceptional circumstances.

Procedure

The Authority will liaise with the recommended list of statutory consultees prior to the processing of a Public Path Order. Consultation will also be held with user groups, Utility Companies and the Local Access Forum. Where issues relate to cross boundary matters, discussion will be held with the relevant adjoining Authority.

Creation Agreements

Policy

The Authority will only enter into Creation Agreements where there is a significant benefit to the network or where it assists in the implementation of the ROWIP. The landowner/occupier must ensure the route is at an acceptable standard prior to a creation agreement being made.

Procedure

A request to create a Right of Way by agreement will be investigated by officers to determine the suitability of the proposed route. A list of any necessary works will be provided to the landowner to bring the route up to an acceptable standard. Officers will inspect this work prior to the agreement being signed. Once the agreement has been signed, the details will be entered onto the Definitive Map and Statement and waymarked on site.

Creation Orders

Policy

The Authority will only consider the making of a Creation Order when it has been identified that a footpath, bridleway or restricted byway needs to be created to significantly enhance the rights of way network for the benefit of the public at large. A Creation Order will only be considered after it has been determined that this aim cannot be achieved by a Creation Agreement made under Section 25 of the Highways Act, 1980.

Procedure

A request to create a Right of Way by Order, will be investigated by officers to determine the suitability of the proposed route. A list of any necessary works to bring the route up to an acceptable standard will be compiled. If, in the opinion of officers, the addition of the route justifies the cost of the recommended works, the making and advertising of the Order and any compensation payment, the request will be put to the Chief Officer Planning, Environment and Economy. Once the Order has been confirmed, the route will be added to the Definitive Map and Statement and details of the recommended works will be added to the maintenance tasks.

Deposits & Declarations

Policy

A schedule of deposited land and declarations will be maintained regularly and be made available to the public via the Rights of Way pages of the Authority's website.

Procedure

The Authority will compile a digital and hardcopy register of all applications, deposits and declarations affecting the Definitive Map and Statement. This will be systematically updated and available for public inspection via the Authority's website and by e-mail or hardcopy upon request.

Developments

Policy

Where a proposed development affects the rights of way network the Authority will work closely with developers and the Planning Department to ensure routes are not obstructed. The Authority will seek improvements to routes affected by developments.

Where possible, developers will be advised to incorporate the existing route of the right of way into their design, at planning application stage. If a diversion is required to facilitate the development, the landowner is required to divert the route under the Town & Country Planning Act 1990. The application will be processed as a priority. The landowner must assist in any negotiations with consultees or the public, to ensure the legislative process is followed without delay to the development.

Diversions

Policy

An Order to divert a right of way will be considered by the Authority. The Authority will recover the cost of the making and confirmation of the Order from the applicant.

Procedure

Once the administration process commences, the Authority will liaise with the landowner to ensure that the legal requirements for the application are fully met. The applicant must ensure that the proposed new route is of an acceptable standard. Details of the application will be forwarded to the relevant consultees, with a response deadline of 6 weeks. The Authority will discuss any responses from the consultees with the landowner with the aim of satisfying any issues raised. The item will be put to the Access & Natural Environment Manager with a recommendation from the Access Officer. If the Access & Natural Environment Manager resolves to make the Order, Notices will be duly advertised. If there are no objections, Notices will be advertised and a Legal Event Order will be prepared. If there are objections, the matter will be referred to the Chief Officer for Planning, Environment and Economy, who will determine whether to forward the application to the Welsh Government.

Diverting obstructed Routes

Policy

Applications for public path orders relating to diversions will not be considered unless the existing route of the path involved is unobstructed. Exceptions will be considered when it is unreasonable to require the removal of substantial obstructions. A substantial obstruction is defined as a habitable or large agricultural building or an obstruction which, if removed, would result in severe, adverse, economic or environmental consequences.

Extinguishments

Policy

An Order to extinguish a right of way will be considered by the Authority. The Authority will recover the cost of the making and confirmation of the Order from the applicant.

Procedure

Once the administration process commences, the Authority will liaise with the landowner to ensure the legal requirements for the application are fully met. Details of the application will be forwarded to the relevant consultees, with a response deadline of 6 weeks. The Authority will discuss any responses from the consultees with the landowner with the aim of satisfying any issues raised. The item will be put to the Access & Natural Environment Manager with a recommendation from the Access Officer. If the Access & Natural Environment Manager decides to make the Order, Notices will be duly advertised. If there are no objections, Notices will be advertised and a Legal Event Order will be prepared. If there are objections, the matter will be referred back to the Chief Officer for Planning, Environment and Economy, who will determine whether to forward the application to the Welsh Assembly Government.

Local Access Forum

Policy

The Authority is committed to considering the advice and developing the work of the Joint Flintshire/Wrexham Local Access Forum by encouraging an active membership, supporting the need for and publicising the role of the Forum. The Authority will recommend a change of Chair at the end of every term.

Modification Orders (Discovery of Evidence)

Policy

Modification Orders which are required to be made in respect of minor matters, such as the resolution of anomalies between the Definitive Map and the Definitive Statement, shall be pursued by the Access Officers without the need to refer them to the Council for approval.

Modifications to the Definitive Map and Statement by usage will be considered by the Council.

Modification Orders (User Evidence)

Policy

Definitive Map Modification Order applications will generally be processed chronologically by order of receipt. However, priority will be given in circumstances:

- where the public will significantly benefit
- where an order is claimed on 20 year use

Where a claimed route is unavailable on the ground for example due to a building or environmental issues the County Council will consider the use of concurrent public path orders to assist with the establishment of the route.

Procedure

When an application to modify the Definitive Map and Statement is submitted under the 20 year rule, officers will investigate the evidence supplied and interview witnesses where appropriate. The Authority will seek the comments of the landowners involved before making a recommendation to the Access & Natural Environment Manager. Applications to add a right of way by usage will only be accepted where there is a clear challenge to public usage.

Motoring Events

Policy

The Authority may co-operate in the administration of sanctioned motoring events in relation to rights of way and an appropriate charge will be made.

Procedure

Motoring event organisers will be required to provide details of the activity at least 3 months prior to it being held. The date and details of the event will be advertised on the Authority's website.

Notices will be erected on site at any location where a right of way needs to be closed for the duration of the event.

The event organisers are required to marshal any location where the route of the event crosses a right of way.

Permissive Path Agreements

Policy

The Authority will enter into Permissive Path Agreements with landowners/occupiers where there is a benefit to users of the network. The maintenance liability and public liability for permissive paths rests by default with the occupier. Permissive Path Agreements may be included as supporting evidence for public path orders.

Procedure

Where a landowner enters into a Permissive Path Agreement, the Authority will provide permissive path way markers. The route, and date of the agreement, will be recorded on the digital version of the Definitive Map. However the landowner has the right to withdraw permission for access.

Statement of Priorities

Policy

Definitive Map issues will be processed chronologically, but if a backlog exists they will be prioritised as follows:

<u>High Priority</u>	Town & Country Planning applications following granting of planning permission Where there is a clear benefit to the public (e.g. crime, claimed routes, erosion) Where it helps to fulfil targets set out in the ROWIP Where there would be a significant cost saving for the Authority
<u>Medium Priority</u>	An additional link, higher status or new route is dedicated which has a significant impact on the network Where there is slight benefit for the public
<u>Low Priority</u>	Where there is only a benefit for the landowner

Temporary Closures

Policy

Temporary Closure Orders will only be made in circumstances where they are necessary for justifiable reasons (e.g. Health and Safety). Where such orders are made, a temporary diversion will also be made, unless this is not possible. Closure times must be kept to a minimum and should not coincide with public or school holidays unless unavoidable.

Procedure

Applications for the temporary closure of a right of way will be processed if adequate notice is given and there is no alternative temporary diversion.

An Access Officer will inspect the site prior to the closure to record the current condition of the route. On completion of the works, the Access Officer will re-inspect the route to ensure it has been reinstated to a satisfactory condition.

Applicants are required to adequately secure the site during the closure period and erect bilingual 'footpath closed' signs at each end of the affected closure.

The Authority will erect Legal notices at each end of the closure and will periodically inspect and replace them as required.

The applicant will be required to cover all reasonable costs incurred.

Widths

Policy

Where there is no defined width recorded in the Definitive Statement, the Authority recommends that there shall be a minimum width of 2 metres for footpaths and 4 metres for Bridleways, Restricted Byways and Byways. This is to be the minimum acceptable width for routes which are created by Public Path Orders or dedications. Widths of new or amended routes will be recorded on the Definitive Statement.

ENFORCEMENT ISSUES

Introduction

Under Section 130 of the Highways Act 1980 Flintshire County Council, as Highway Authority, has a duty to assert and protect the public right to use the highways in its administrative area, and this includes public rights of way. In particular, it has a duty to ensure that public rights of way are not obstructed by the wilful action of landowners or other parties, and there are a number of powers which it can use to secure the removal of obstructions if negotiation fails to resolve the problem.

Flintshire County Council has always regarded the removal of obstructions as a very important statutory duty, and this commitment has been reinforced by amendments to the Highways Act brought in by the CROW Act 2000. Any person may now serve a notice on the Highway Authority to require the removal of some of the more common obstructions, and if the Authority fails to comply with the notice, that person can refer the matter to the Magistrates Court. The Court has the power to order the Authority to remove the obstruction within a reasonable period of time which can be specified in the order.

Obstructions on public rights of way vary greatly in scale and nature, and actions taken by the Authority to open up the paths have to be appropriate to the circumstances in each case. Physical obstructions may take many forms and include broken stiles, fences, encroaching vegetation, warning notices and sometimes buildings.

Aggressive Dogs

Policy

Complaints in relation to a dog impeding the free use of a public right of way by behaving in a threatening manner and frightening users is classed as a public nuisance under common law. It may also be an offence under section 137 of the Highways Act 1980 because it constitutes an obstruction to the highway.

Procedure

Flintshire County Council will visit the location of the complaint to gather any suitable evidence and then inform the police of any reported incidents of dog attacks against users of a public right of way. The Police will issue an Incident Number and an Investigating Officer will be assigned to the report, this will be noted and the Authority will then liaise with the Police. The details of the incident will be retained by the Authority for future reference. It should be noted that 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.

The Authority's Dog Warden will be informed of any incident regarding intimidating dogs and dog attacks.

Agricultural/environmental Schemes

Policy

The Authority will share information with the Welsh Government on request on issues relating to cross compliance and rights of way to ensure that land managers meet the requirements of the agricultural and environmental schemes.

Barbed Wire

Policy

Flintshire County Council, as Highway Authority, has the power to require the removal of barbed wire adjacent the highway if it causes a danger or nuisance to users.

Procedure

Under Section 164 of the Highways Act 1980 Flintshire County Council 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). If the owner / occupier fails to comply with the order within a reasonable time, the Authority may do whatever is necessary to remove the nuisance and recover all expenses incurred in doing so.

Bulls, including Cattle

Policy

Complaints regarding bulls in a field crossed by a right of way will be investigated within one working day of receipt. Legislation states that it is an offence under section 59 of the Wildlife and Countryside Act 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.

Procedure

Officers will gather evidence from site and make all reasonable effort to locate the landowner. If the landowner is known, they will be informed of Health and Safety requirements and requested to remove the bull immediately.

A repeated offence by the owner will result in the information being passed to the Health and Safety Executive without prior communication.

Cattle grids

Policy

The Authority will serve a notice on a landowner where a cattle grid impedes a bridleway. Where a footpath crosses a cattle grid the Authority will liaise with the landowner in order to install an appropriate alternative crossing.

Procedure

When a bridleway is obstructed by a cattle grid, the Authority will request a suitable bypass gate is provided. If, after no more than 2 months, the landowner fails to install a suitable means of crossing the boundary, the Authority will serve a notice on the landowner requiring action to be taken within a specified timescale. Should the cattle grid remain in place without alternative means of crossing, the Authority will employ contractors to fill in the surface of the bridleway and recharge all costs to the landowner.

Dangerous Land adjoining the Highway

Policy

From time to time the Authority encounters unfenced dangers on adjoining land which present hazards to path users. The Authority has a duty to protect path users from such dangers and will in the first instance enter into dialogue with the owner of the adjacent land to urge him or her to remove or adequately fence the danger. The Authority can require the owner of the dangerous land to carry out the necessary works by service of notices. If the owner does not comply with the notice the Authority may carry out the work and recover the costs from the owner.

Procedure

Where the safety of the public is threatened by dangerous land adjoining the highway, the Authority will contact the landowner, if known, and recommend suitable remedies. If, after no more than 3 months, the landowner fails to act upon this advice, the Authority will serve a notice on the landowner requiring action to be taken within a specified timescale. Should the situation remain, the Authority will employ contractors to make the highway safe for the public and recharge all costs to the landowner.

Dangerous Trees

Policy

Flintshire County Council, as Highway Authority, has the power to require the removal of a dangerous tree, hedge or shrub adjacent the highway if it causes a danger or nuisance to users.

Procedure

Under Section 154(2) of the Highways Act 1980, Flintshire County Council 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.

Electric Fences

Policy

Electric fences across a highway should be appropriately signed with appropriate means of crossing, or an insulated handle to assist passage.

Procedure

Landowners will be advised of the options available to allow free passage. If no action is taken by the landowner within a specified period (no longer than 2 weeks) the Authority will serve a notice on the landowner requiring appropriate action to be taken within a specified timescale. If the issue is not resolved after the specified period, the Authority will undertake the required works and recharge all appropriate costs to the landowner.

Encroachment

Policy

The Authority will inspect and enforce encroachment issues according to the severity of the inconvenience to the user. This policy covers things deposited on the highway and overhanging vegetation.

Procedure

When the Authority receives a complaint about encroachment of a path an inspection will be carried out to determine the severity of the case. If the encroachment is slight, Officers will inform the landowner of the complaint and monitor the situation to ensure it does not worsen.

If the encroachment is deemed by officers to hinder the public use of the route, the landowner will be advised of the complaint and asked to resolve the situation. If, after no more than 1 month, the path remains inconvenient, the Authority will serve a notice on the landowner requiring appropriate action to be taken within a specified timescale. If the issue is not resolved after the specified period, the Authority will undertake the required works and recharge all appropriate costs to the landowner.

Enforcement Complaints

Policy

In order for there to be an auditable trail in respect of each alleged obstruction, only written complaints / requests will be considered. These may be in the form of letters or emails. Only in emergency situations will verbal complaints / requests be considered.

Fences

Policy

When a landowner wishes to erect a fence across a right of way it is their responsibility to apply for authorisation for a gate or stile. Once permission has been granted the landowner must, at their own expense, install the structure to an acceptable standard.

Procedure

If the Authority has evidence to suggest the obstruction has been in place during the 2010 condition survey, the Authority will provide materials for a new gate or stile. The landowner must collect the materials from stock and install within a specified period, being no longer than 1 month.

If the landowner fails to collect or install the stile/gate, the Authority will serve the appropriate notice requiring appropriate action to be taken within a specified timescale. If the fence remains impassable after the specified period, the Authority will undertake the works and recharge all reasonable costs to the landowner.

If the Authority does not have evidence to suggest the obstruction has been in place during the 2010 condition survey, the Authority will contact the landowner and request an appropriate crossing is installed within a specified period (being no longer than 1 month). If the issue is not resolved within this period, the Authority will serve the appropriate notice requiring appropriate action to be taken within a specified timescale. If the fence remains impassable after the specified period, the Authority will undertake the works and recharge all reasonable costs to the landowner.

The Authority reserves the right to remove a sufficient section of the obstruction to allow free passage without prior consultation.

Firearms

Policy

The Authority will inform the police of any reported incidents involving firearms on or across public rights of way.

Procedure

If any firearms issues are reported the Authority will advise the complainant to inform the police. Once an Incident Number and Investigating Officer have been assigned to the report, this should be given to the Authority who will then liaise with the Police. The Authority will visit the location of the complaint to gather any suitable evidence. The details of the incident will be retained by the Authority for future reference.

Illegal Diversions

Policy

If a route has been diverted without the due legal process being followed, the Authority will, if appropriate to the circumstances, give the landowner the option to apply for a Public Path Diversion Order (at their expense) or to enter into a Permissive Path Agreement.

Procedure

When a landowner alters the route of a public right of way without legal permission, the Authority will request that route (as shown on the Definitive Map) is re-opened. Advice will be provided on alternative routes, by Order (at the landowners cost) or by Agreement. If, after no more than 6 months, the landowner has failed to resolve the issue, or is not in the process of diverting the route, the Authority will serve a notice on the landowner requiring the original route to be re-opened within a specified timescale. If the route remains obstructed after the specified period, the Authority will reinstate the original route and recharge all costs to the landowner.

Failure to resolve the matter to the satisfaction of the Access Officer, will result in the Authority taking enforcement action against the landowner to ensure the public right of way is re-opened.

Intimidation

Policy

Complaints of intimidation will be investigated and the information collated will be given to the Police. Repeated incidents may result in legal action.

Procedure

Intimidating behaviour is also used to deter path users, instances where 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 section 130 of the Highways Act 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 section 137.

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. However whenever a path is obstructed, the Authority will in the first instance attempt to negotiate with the person responsible, and will only resort to the use of legal powers if this approach fails. Experience has shown that this approach is likely to produce the quickest and most cost effective results.

If a landowner/ occupier commits a further rights of way offence within a three-year period of being contacted by the Rights of Way Team about any rights of way offence on their land, notice may be served without further communication or more serious enforcement action taken.

Landowners

The Authority will make all reasonable attempts to locate the landowner to inform them of the complaint, their obligations, and possible outcome if legal action is pursued.

These may include:

Land Registry search

Town and Community Council

Electoral Register

Planning/Tir Gofal Applications

Notices posted on site

In the event that, following all reasonable attempts, the landowner cannot be identified or located, the Authority will consider appropriate action.

Locked/Tied Gates

Policy

The Authority will serve a notice when a locked gate impedes access to the public. However, in some cases, the Authority may remove the lock without prior warning.

Tied gates which are not easily undone are obstructions will be resolved in the same manner as a locked gate.

Procedure

When a report of a locked gate is received the Authority will make all reasonable effort to locate the offending landowner. If the landowner cannot be determined, a notice will be attached to the gate requesting the removal of the lock. If the gate remains locked after the specified period, no longer than 2 weeks, the Authority will remove the lock.

When a landowner is identified, the Authority will request that either the lock is removed, or an alternative boundary crossing is provided. If, after no more than 1 month, the landowner has failed to remove the lock, or request authorisation for a stile or gate, the Authority will serve a notice on the landowner requiring appropriate action to be taken within a specified timescale. If the gate remains locked after the specified period, the Authority will remove the lock.

The Authority will remove the lock without any notice period on the reoccurrence of the offence. If the landowner continues to impede access to the public, the Authority will seek an injunction.

A complaint about a gate which is not deemed to be easily undone by officers will be resolved by the above procedure.

Misleading Signs/Notices

Policy

Any notice or sign placed on a public right of way containing false or misleading information that is likely to deter people from using a public right of way is an offence under the Highways Act 1980. The Authority has the power and will generally remove misleading signs erected on a public right of way.

Procedure

Officers will seek advice from the Authority's Legal Department to ascertain the legality of the sign/notice.

If the sign/notice is believed to be misleading in any way, the Authority will contact the landowner and request its removal. If, after no more than 1 month, the landowner has failed to remove the sign/notice, the Authority will serve a notice on the landowner requiring appropriate action to be taken within a specified timescale. If the sign/notice remains in place after the specified period, it will be removed by the Authority and any incurred costs will be recovered accordingly.

Obstructions

Policy

The law requires the Highway Authority to ensure that the highway is clear of all unlawful obstructions and encroachments. In many cases a problem can be resolved with a simple request to the landowner to remove the obstruction. However, where co-operation is not forthcoming the Authority has a wide range of powers to secure the removal of the obstruction, and recover any costs incurred in doing so. The Authority may also prosecute in instances of non-compliance.

Examples of obstructions and nuisances are:

- materials deposited on the highway;
- projections from buildings;
- overhanging vegetation;
- restriction by the planting of trees;
- soil being washed onto the path;
- water discharging onto the path;
- barbed wire;
- electric and other fences;
- structures;
- cattle grids.

Ploughing/Cropping

Policy

If a right of way has been ploughed or planted the Authority will seek to resolve the matter in accordance with the timescales set out in the Highways Act 1980.

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.

Procedure

When a surface offence comes to the attention of the Highway Authority, the Authority will advise the landowner that whilst occupiers of land are permitted under section 134 of the Highways Act 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"

If, after no more than 14 days the route has not been reinstated, the Authority will serve a notice on the landowner requiring appropriate action to be taken within a specified timescale. Failure to act upon the notice will result in the Authority employing contractors to carry out the necessary works. All appropriate costs will be recharged to the landowner.

If the width of the right of way is unrecorded, Schedule 12A of the Highways Act 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.

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.

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.

Priorities for Enforcement

Policy

All enforcement issues will be prioritised according to a combination of the path category (1-8) and the level of danger presented to the public by the obstruction. In addressing an enforcement issue, priority will then be given to addressing any other enforcement / maintenance issues on the same right of way.

Prosecution

Policy

The Authority may take legal action where there is a realistic prospect of a conviction and such action can be shown to be in the public interest.

Protection of Identity

Policy

The personal details of customers will be protected under the Data Protection Act 1998. GDPR

Recovery of costs

Policy

The Authority will always aim to remove obstructions, in the first instance, by informal discussions with the landowner/occupier. If the obstruction is not removed within a satisfactory timescale, formal legal notice will be served. After this time the Authority will arrange for the removal of the obstruction and recover reasonable costs where default enforcement action is carried out.

Repeat offenders will be served enforcement notices without prior warning and may face prosecution.

Procedure

Appropriate costs will be recovered and the Enforcement Officer will record:

- Officer time - preparation of paperwork, attendance on site.
- Travel - time and mileage to and from the location of the obstruction.
Mileage charged at the Authority's standard rate for casual car use.
- Contractors - All costs.
- Materials - All costs.
- Administration - Relevant administration costs.

Section 63 of the CROW Act 2000

Information

Section 63 CROW Act 2000 is a section of legislation which enables members of the public to serve Notices on the Authority enforcing the duty to prevent obstructions.

The procedure for dealing with a S.63 notice is clearly laid out in the Welsh Assembly Government guidance notes dated 2004.

MAINTENANCE ISSUES

Introduction

Most public rights of way are “maintainable at the public expense”. It is the duty of the Highway Authority to maintain the surface of rights of way to a suitable standard for ordinary use. To fulfil this duty, the Highway Authority must ensure that surface vegetation is under control, the route is adequately signposted and waymarked, and that any Authority-owned structures (walls, bridges, ditch crossings, handrails and barriers) are in an acceptable condition.

The landowner is responsible for maintaining any structure that exists purely for their benefit, i.e. gates, stiles, some bridges and ditch crossings, walls and fences. The landowner is also responsible for ensuring that overhanging vegetation does not impede with the public enjoyment of the right of way.

3rd Party Maintenance Schemes

Policy

Flintshire County Council has an obligation to maintain the rights of way network within the County, and partnership-working will be developed further including working with other internal departments, Town and Community Councils, Ramblers Association etc. to formulate action plans, improve local maintenance regimes and pursue maintenance agreements with landowning organisations.

Procedure

The Authority will liaise with the relevant groups to discuss potential works. Once the proposal and estimate have been agreed by the Authority, work may be undertaken. The Authority may pay for materials or, on completion, and on receipt of the appropriate invoice and work details, the Authority may arrange payment for works. The Authority will undertake random inspections throughout the year to ensure that work is being carried out to an acceptable standard.

If quotation / estimate approval has not been received prior to work, or work is carried out on routes not shown on the Definitive Map or work is substandard, the Authority reserves the right to refuse to accept responsibility for payment.

Access for All

Policy

In managing and developing the Public Rights of Way network, the needs of all sectors of the community will be considered. In particular the principle of least restrictive access will be implemented, whereby consideration will be given, as appropriate, to replacing stiles with gates, or removing furniture altogether in favour of gaps.

Bridges, Culverts & Structures

Policy

The highway authority is normally responsible for bridges crossing natural features such as rivers and streams. Bridges over man-made features, such as drainage ditches etc may be maintainable by the landowner.

Where a landowner creates a new ditch that crosses an existing right of way he/she must provide a suitable bridge or structure which can accommodate all legitimate users safely and without restriction.

Drainage & Flood Alleviation

Policy

Problems relating to natural watercourses and flooding will be monitored as and when necessary.

Procedure

Environmental issues and best value will help determine what course of action will be taken.

Maintenance of Stiles/Gates

Policy

The law requires stiles and gates on footpaths and bridleways to be maintained by the landowner in a safe and usable condition, unless an agreement to the contrary exists. Landowners are entitled to claim at least 25% of the maintenance of stiles and gates from the Highway Authority. However, many Authorities either provide materials in lieu of this contribution or extend funding to 100% by doing the work themselves. This is the case in Flintshire, where stile kits are provided free of charge, but the landowner is normally expected to install them.

If an owner/occupier of land wishes to install additional stiles and gates they must apply for permission to do so. The Highway Authority can only grant such permission if the gate or stile is on land in use for agriculture, forestry or the keeping of horses, and necessary in order to prevent ingress or egress of animals.

Public Rights of Way Maintenance Priority for Works

Policy

High priority will be given to signposting of rights of way where they leave a metalled road, and where they are passable.

All other maintenance works will be prioritised according to a combination of the path Priority (1-8) and the level of danger presented to the public by the problem. In addressing a maintenance issue, priority will then be given to addressing any other enforcement / maintenance issues on the same right of way.

Repair of Byways

Policy

Public rights of way are all highways, and Flintshire County Council (FCC) as Highway Authority has a duty to maintain them in a suitable condition for the public to use, whilst also protecting the rights of the public to their use and enjoyment. Below is a list of types of public right of way and their legal uses. Although these are the legal users, the location of a right of way means that the level and purpose of use will vary.

- Public footpaths – used by pedestrians.
- Public bridleways – used by pedestrians, horse riders and cyclists.
- Restricted byways – used by pedestrians, horse riders, cyclists and carriage-drivers.
- Byways open to all traffic – used by pedestrians, horse riders, cyclists, carriage-drivers and motorised vehicles.

There are over 672 miles of public rights of way in Flintshire County Council, the vast majority being pathways in rural locations. FCC's maintenance budget is limited and must be spread across this large network.

Public rights of way serving as access to private property or land

Where a public right of way forms the access to properties or adjacent land, there may be a relatively large amount of wear and tear on the surface as a result of these additional uses. FCC's responsibility remains the same, however, and it will be obliged to ensure that the surface of the right of way is safe and suitable for the public users. Most of these rights of way are rural tracks (or form easy access to rural areas), and so the standard of maintenance would be very basic:- ensuring they are safe whilst at the same time protecting the rights of the public to enjoy a rural environment.

It is important to note that FCC has a responsibility towards public users only. It therefore has no duty to provide suitable access for any users of a right of way which are not listed above. For instance, if a public footpath or bridleway forms part of a vehicular access to land or property, FCC has no duty to ensure it is suitable for vehicles, because a public footpath or bridleway carries no public vehicular rights.

In such instances, residents or landowners possessing private rights of vehicular access are entitled to make this access useable for their purposes, but all works must be approved in advance by FCC, and only suitable contractors may be used, because the right of way is a highway. Many residents / landowners accept they have a responsibility towards upkeep and may actually prefer the access to remain fairly rough, as this reduces speeding and is rural in character. Some public rights of way are also 'private streets', which are public highways which must be maintained privately, i.e. by the residents.

Procedure for repair and maintenance

Should a complaint be received about the condition of the surface of a right of way used as access to land or property, FCC will inspect the right of way and assess its safety and suitability for the public users. Should the assessment deem that work is required, then basic repairs will take place – for instance, basic regrading of the surface or filling of potholes. Where wear and tear is clearly primarily as a result of vehicular access to property or land, the residents will be asked for a contribution but there is no legal obligation to pay.

Should residents / landowners request a higher standard of maintenance, then this will have to be provided at their own cost. Because rights of way are highways, the County Council may have to stipulate certain specification details which are suitable for public highways. FCC will contribute to work only where it would have been obliged to carry out basic repairs itself, and the amount of this contribution will equate to the cost of such basic repairs.

Residents / landowners may be asked to source a quotation themselves from suitable contractors, but FCC must approve the quotation and proposed specification prior to work taking place (this also has the added benefit that FCC can check that the quoted rates are reasonable). If approved, FCC will then authorise the repair and request that residents/ landowners obtain from the contractor an invoice to FCC for FCC's proportion of the contribution. Alternatively, FCC may order the works and invoice a representative of the residents/ landowners, who may then in turn recoup the other contributions.

FCC must inspect and certify the work on completion, in order to avoid any future liabilities resting on residents/landowners. The contractor must have **£5m** public liability insurance and be registered on the Streetworks Qualifications Register, if they are to work on a public highway. Risk Assessments, method statement and traffic management proposals must also be submitted and approved by FCC in advance of the works being undertaken. For works up to £10K, the minimum requirement is one verbal or written quotation, although where practical competition is required. Where only one quote is requested, the manager still has a responsibility to ensure and be able to demonstrate that value for money has been obtained.

Sometimes, residents / landowners wish to repair the surface physically themselves. They will not be liable whilst work is taking place, but FCC must inspect and certify the work on completion, in order to avoid any future liabilities resting on residents / landowners. Another method of dealing with repairs is for FCC to order materials and arrange for the aggregate company to deposit them on site, at a location to suit the residents/ landowners, and FCC's financial outlay is restricted to the purchase and delivery of the material. The residents /landowners then arrange to lay the material, but such an arrangement should be restricted to a temporary filling of potholes, because residents /landowners would rarely possess the machinery required to incorporate and compact the material across the whole surface. In both cases, the proposed work must be approved in advance by FCC.

If residents /landowners are able to set up an association, it is possible to enter into a legal agreement with the County Council under Section 278 of the Highways Act

1980, whereby the Council carries out agreed works and the association reimburses an agreed sum to the Council.

Notes on suitable materials and specifications

When ordering the materials, it is necessary to be sensitive to the local conditions e.g. sandy aggregate is more appropriate than limestone for acid areas such as commons. Limestone is suitable for chalk areas.

FCC will only authorise a surface which is consistent with its duty under Section 130 of the Highways Act 1980: "it is the duty of the Highway Authority to assert and protect the rights of the public to the use and enjoyment of any highway for which it is Highway Authority". In practice, this means that the County Council will need to consider both the amenity value and the ease of use the public right of way. A hard sealed surface such a tarmacadam is usually considered inappropriate in most circumstances, especially where there are public equestrian rights of way. Such sealed surfaces can be very costly to maintain once they begin to break up, and may produce hazardous hard edges when deteriorating. The best alternative would be a graded aggregate, suitably shaped to shed water, and compacted, because this is much more easily re-worked to restore a suitable surface. Sometimes, all that is needed to restore an old potholed aggregate surface is a redistribution of the surface material. However if the proposal is to tarmac a bridleway, then stone mastic asphalt (SMA) is not to be used and the Authority should take safety implications and the enjoyment of current users, including riders, into consideration.

Routine Inspections

Policy

The Authority will undertake a 33% inspection of the rights of way network each year consistent with staff levels and will consider input of partners and volunteers. In addition to this, reported issues will be inspected.

Procedure

When Officers undertake inspections of rights of way, the whole route will be inspected where possible. The date of this inspection will be recorded together with any defects found on the inspection.

Section 56 Highways Act 1980

Information

Section 56 HA1980 is a section of legislation which enables members of the public to serve Notices on the Authority enforcing the duty to maintain. The procedure for dealing with a S.56 notice is clearly laid out in the Welsh Government guidance for Local Authorities on Public Rights of Way dated 2016.

Signposting and Waymarking

Policy

The Highway Authority is required to signpost all rights of way where they leave a metalled road. The sign must indicate the status of the right of way, i.e. whether it is a footpath, bridleway etc. Signs may also include a destination and/ or a distance.

Authorities are also required to place signs, such as waymarkers, at other locations where they consider it necessary to assist people that are unfamiliar with the locality.

Procedure

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

Way marking will be kept to a reasonable minimum. Newly installed stiles and gates will be way marked. Permissive way markers will be provided for agreed permissive routes. The provision of destination signage will also be considered in appropriate circumstances.

Vegetation

Policy

A strimming contract will be undertaken on paths listed on the Authority's strimming schedule. Additional routes may be added to the schedule where there are regular complaints of overgrowth. Town and Community Councils will be encouraged to undertake local management of vegetation through the Community Maintenance Scheme.

Glossary of Terms

ROWIP	Rights of Way Improvement Plan
ROW	Right(s) of Way
DMMO	Definitive Map Modification Order
PPO	Public Path Order
HA1980	Highways Act 1980
CROW 2000	Countryside & Rights of Way Act 2000
WCA1981	Wildlife & Countryside Act 1981
TCPA1990	Town & Country Planning Act 1990
LAF	Local Access Forum