



Shropshire's **GREAT OUTDOORS**

Public Rights of Way

A guide for landowners
and farmers



1. Introduction

Shropshire has over 5,500km of Public Rights of Way. Shropshire Council works closely with both landowners and local communities to keep these routes open.

This leaflet has been produced to provide an easy guide to some of the most common issues and queries relating to Public Rights of Way and the legislation that governs them.

Whilst primarily written to inform farmers and landowners of their responsibilities, the guide should be beneficial to everyone who enjoys getting out in the countryside.

More detailed Public Guidance Notes (PGN) are available on the key subject areas. To view these and others please visit the Council's webpages at www.shropshire.gov.uk/outdoor-recreation/countryside-access-and-public-rights-of-way/countryside-access-and-public-rights-of-way-guidance-notes/

2. Public Rights of Way (PROW)

There are four categories of Public Rights of Way:-

- **Public footpaths (FP)** – Public rights to use on foot
- **Public Bridleways (BW)** – Public rights to use on foot, horseback, leading a horse and on a bicycle
- **Restricted Byway (RB)** – Public rights to use on foot, on horseback, leading a horse, on a bicycle and by horse drawn vehicle
- **Byway Open to all Traffic (BOAT)** – Public rights on foot, horseback, leading a horse, on a bicycle, in a motorised or non-motorised vehicle and driving animals.

All of the above are public highways and as such are protected by law under the provisions of the Highways Act 1980.

Other legislation governing Public Rights of Way includes:

- National Parks and Access to the Countryside Act 1949
- Countryside Act 1968
- Wildlife and Countryside Act 1981
- Rights of Way Act 1990
- The Countryside and Rights of Way Act 2000.



3. Barbed Wire

A barbed wire fence or exposed barbed wire erected across a public right of way without an adequate means of crossing is an offence. It is an obstruction to the public right of way, and also a nuisance and a danger to members of the public. It should be removed. If a barbed wire fence is required for stock control or agricultural purposes, the Council can help by providing a suitable crossing and legally authorising a new structure across the public right of way. Without this an offence is being committed.

Highways Act 1980 Sections 137 & 149

Barbed wire adjacent to a path is in most cases perfectly legitimate however it can be considered to be a 'public nuisance' if likely to injure people or animals lawfully using the Right of Way. If this is the case, the landowner should remove the barbed wire. Failure to do so could result in action in the Magistrates Court.

Highways Act 1980 Section 164

4. Bulls & Dangerous Animals

It is an offence to allow a bull over 10 months old and on its own and/or any bull of a recognised dairy breed (even if accompanied by cows/heifers) to be at large on land crossed by a public right of way.

The recognised dairy breeds are Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry.

Bulls less than 10 months old with cows or heifers are exceptions to this rule.

Similarly, if there is any question about a bull's temperament or any other animal's temperament which is known to the keeper of that animal, it should not be allowed in a field where a public right of way passes. If injury occurs to a member of the public using the route then an offence may have been committed and the occupier could be liable.

Wildlife and Countryside Act 1981 Section 59 Animals Act 1971 Section 2

The HSE provides further guidance on cattle and public access in England and Wales at <http://www.hse.gov.uk/pubns/ais17ew.pdf>





5. Cross Compliance

Landowners/occupiers should be aware that if they breach the legislation relating to public rights of way they can be reported to the Rural Payments Agency (RPA) which can affect their Basic Payment Scheme (BPS).

In all instances the Council will try to resolve any issues through co-operation and negotiation. Reporting to the RPA is only undertaken as a last resort.

6. Dangerous Land adjoining a Public Right of Way

Occasionally the Council encounters unfenced dangers on land adjoining a path e.g. excavations alongside a route or building works undertaken by the landowner. If this does occur the Council will liaise with the owner to rectify the problem. If this is not successful then the Council can serve notice on the owner/occupier to undertake such works to repair, protect, remove or enclose the land to resolve the danger. Non-compliance allows the Council to undertake the work and recover the costs from the owner/occupier.

Highways Act 1980 Section 165

7. Definitive Map

The Definitive Map and Statement is the legal record of Public Rights of Way. If a route is shown on this map then it is conclusive evidence of the existence of that route.

There is a legal duty on the Council to ensure that the Map is kept up to date and accurate. Unrecorded routes can be legally recorded and errors corrected where there is sufficient evidence.

PGN 8 & PGN 12





8. Dogs

Dogs are allowed on public rights of way as they are regarded as a 'usual accompaniment' on a public right of way. Whilst the legislation does not require that dogs are kept on leads it does require that they are kept under 'close control'. The Countryside Code produced by Natural England provides further advice about keeping dogs under effective control as well as general advice and guidance when accessing the countryside.

A dog is not entitled to roam away from the path and if this does occur then the owner of the dog could be guilty of committing trespass against the landowner. The Council does have some signage available to request that dogs are kept on leads.

PGN 03

The Countryside Code https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338299/countryside-code.pdf

9. Electric Fences

Where an electric fence is placed across or alongside a right of way the public must not be exposed to the risk of receiving shocks. It must be identifiable as being electrified and appropriate warning signs should be displayed.

Users should be able to pass through or over an electrified fence safely and without difficulty otherwise the fence will be deemed to be an obstruction. The Council have powers to enforce the removal of the fence should this be necessary. In the main such matters are resolved by the landowner insulating the fence and/or the Council authorising a new structure e.g. a gate to allow safe passage.

Highways Act 1980 Section 137, 137ZA and 149

PGN 06



10. Encroachment

Encroachment is an unlawful obstruction of the highway. This often involves a reduction in the width of the path due to permanent structures being erected across the route. Any such instances which are reported to the Council will be fully investigated and a decision made. Those responsible will be made aware of the encroachment and the possibility of enforcement action should further encroachment occur. If encroachment is materially affecting the right of way and users' rights and the person/s responsible do not remove the encroachment then formal enforcement action can be undertaken. For example, incorporating part of the highway in your garden, building on the highway.

Highways Act 1980 Section 143, 137 & 137ZA

11. Fencing Public Rights of Way

It is not an offence to enclose a Public Right of Way with a hedge/fence/wall but it is advisable to contact the Council first. This is to ensure that there is no encroachment onto the legal width of the route and that the materials for the proposed fencing are appropriate.

Hedges and Trees adjacent to Public Rights of Way

Boundary hedges and trees to the side of a Public Right of Way are the responsibility of the owner/occupier. The Council can require the owner or occupier to cut back any part of a hedge, tree, shrub or other vegetation which overhangs a right of way, if it endangers or obstructs the passage of legitimate users.

Highways Act 1980 Section 154

There are also specific provisions which allow action to be taken by the Council when a Byway Open to All Traffic or a Restricted Byway is being damaged by the exclusion of light and air due to adjacent hedges or trees.

Highways Act 1980 Section 136

12. Liability – Whose?

Owners and occupiers of land crossed by public rights of way can be liable for injuries caused to path users by negligence of the owner or occupier. This could occur when furniture on the route is not adequately maintained or there is an obstruction across a right of way e.g. electric fence.

Occupiers Liability Act 1957 & 1984

The Council as the Highway Authority is responsible for the surface of Public Rights of Way. The Council could therefore be liable for an injury caused to persons if it is due to a negligent act with regard to the surface of the path.

13. Misleading Signs & Notices

It is an offence to erect misleading signs or notices on Public Rights of Way. The Council has the power to remove any misleading or unlawful signs on public rights of way that deter people from exercising their legal right. Such signs erected on the PROW can be removed by the Council.

Highways Act 1980 Section 132

National Parks and Access to the Countryside Act 1949 Section 57

14. Obstructions

Under common law the Council as Highway Authority has a duty to seek, prevent and remove obstructions on Public Rights of Way. This duty is reinforced by The Highways Act 1980 which imposes a duty on the Council to protect and assert the rights of the public to use and enjoy the network and to prevent where possible, the stopping up or obstruction of the network.

Highways Act 1980 Section 143 Highways Act 1980 Section 130

PGN 04

Wherever possible the Council will attempt to resolve issues involving obstructions through discussion and agreement with the offending party. The nature, history behind and extent of the obstruction will be investigated before determining how to proceed. This can include formal prosecution and seeking a Magistrate's order to remove the obstruction.

Highways Act 1980 Section 137



15. Ploughing & Cropping

It is an offence to plough any field edge public right of way and cross field Restricted Byway or BOAT. It is possible to plough cross field footpaths and bridleways. However there is a statutory period within which the public right of way has to be reinstated. Reinstatement means marking the route clearly on the ground and making the surface reasonably convenient for public usage. The statutory period is 14 days for the first disturbance and 24 hours for any further disturbance such as harrowing or drilling. Upon application the Council can grant an extension of that period not exceeding 28 days.

Highways Act 1980 Section 134

Where a crop (other than grass) has been sown across land with a public right of way the owner/occupier has a duty to ensure that the line of the right of way is indicated to not less than its minimum width and to ensure that a growing crop does not encroach onto this line during the growing season. Failure to comply with this duty is an offence.

Highways Act 1980 Section 137A

The Statutory minimum width for reinstatement is that which is defined in the Definitive Statement that accompanies the Definitive Map.

In the absence of a Definitive Statement for a route the following statutory minimum widths apply in metres:

	Field Edge	Cross Field
Footpath	1.5m	1m
Bridleway	3m	2m
Restricted Byway & Byway Open to all Traffic	3m	5m

Highways Act 1980 Schedule 12A

PGN 05





16. Stiles, Gates and Other Furniture

The Highways Act 1980 places a duty on the landowner to ensure that any stile or gate is kept in good repair and in a safe condition. The Council has a duty to ensure that the landowner complies with this obligation. The Council contributes 25% towards such structures.

Highways Act 1980 Section 146

Shropshire Council provides this contribution by supplying the furniture. Under the Council's easier access policy if stiles can be replaced with gates then the Council will often supply and install the gates if this is preferred.

If a landowner wishes to install any additional gates or furniture on a public right of way then permission needs to be sought from the Council. The only circumstance where authorisation can be given is where it can be demonstrated that the structure is required to prevent the ingress or egress of animals. Any additional furniture erected without authority is an offence and could result in action being taken for obstruction of the highway.

Highways Act 1980 Section 147

PGN 02



17. Surface

Often but not always (depending how the route came into being) the surface of a public right of way is vested with the Council as the Highway Authority, who is responsible for ensuring that it is in a condition suitable for the type of route.

It is an offence to interfere with the surface to the detriment of users. Landowners/occupiers who wish to alter the surface in any way will require prior authorisation from the Council. In addition, owner/occupiers must ensure that any private vehicular usage does not damage the surface of the path. If damage is caused the surface must be reinstated at the owner's cost to the required standard.

PGN 24



18. Widths of Public Rights of Way

The width of a public right of way will depend on the circumstances of that individual route.

The width can be set out within the Definitive Statement, or a historical document. It can be the width between boundaries such as hedges or fences or it can be that which has been habitually used. Please contact the Outdoor Partnerships Team if you have a specific enquiry relating to a route's width.

19. Additional Information

The Outdoor Partnerships Team is responsible for all matters relating to the Public Rights of Way within Shropshire. We also manage Country Parks, Countryside Sites and Play Areas.

We work very closely with Parish Paths Partnerships; groups of local volunteers who come together to maintain, improve and promote local Rights of Way. They identify local priorities and work to keep routes accessible for everyone to enjoy.

This document is a guide only and is not an exhaustive document on Public Rights of Way legislation. You are entitled to seek independent legal advice on any aspect covered by this leaflet; it is not intended as a substitute for that advice.





Shropshire's GREAT OUTDOORS



For any queries, further advice or for assistance with any issues on Rights of Way crossing your land please contact us:

E-mail: outdoor.recreation@shropshire.gov.uk

Telephone: **0345 6789000**

In writing:

Outdoor Partnerships Team
Economic Growth & Prosperity
Shropshire Council
Shirehall, Abbey Foregate,
Shrewsbury, Shropshire, SY2 6ND

www.shropshire.gov.uk
shropshiregreatoutdoors.co.uk



The NFU is the only organisation that champions all farmers and growers in England and Wales. With over 100 policy and industry specialists and a network of over 350 Group Secretaries and 32 County Advisers our local support is second to none. We're here to give you a voice and protect your way of life now and in the future. Whether you're a grower, farm livestock or have a mixed holding, we're here for you.

Contact: Sarah Faulkner, Environment and Rural Affairs Adviser on **01952 400500** or email: sarah.faulkner@nfu.org.uk



The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales. The CLA in-house professional advisory team gives unlimited, independent and impartial information on a wide range of issues to members, including rights of way legislation.

Contact: Mark Riches, CLA Midlands Rural Surveyor on **01785 337010** or email: mark.riches@cla.org.uk



www.walkingforhealth.org.uk



www.healthyshropshire.co.uk



www.shropshire.gov.uk