

**MEETING : RIGHTS OF WAY COMMITTEE**  
**DATE : 27 JANUARY 2003**

REPORT OF : JULIAN PELLATT, COUNTY RURAL AND RECREATION  
OFFICER

Contact : Mike Taylor, Public Rights of Way Maintenance Manager  
Officer (01606) 301482

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## **AMENDMENTS TO THE PUBLIC RIGHTS OF WAY ENFORCEMENT PROTOCOLS**

### **INTRODUCTION**

1 Members will recall that following adoption by committee on 19 July 2001 of the enforcement protocols the booklet "Public Paths an A to Z of Problems and Protocols" has been published. The booklet has been largely well received, indeed requests have been made by several other authorities to adopt it for their procedures and protocols. The booklet has proved extremely useful to officers and has greatly assisted officers in dealing more effectively with a wide variety of rights of way infringements and queries.

### **BACKGROUND**

2 Members will recall that the content of the publication was largely based on officer experience in dealing with real Rights of Way issues. It was, therefore, foreseeable that new matters would come to light leading to new material being added to the leaflet.

3 There have been several matters that have led officers to believe that amendments need to be made to the leaflet. In addition there have been some comments about the sections dealing with obstructions, (page 9 and 10) both by offenders and user group representatives which officers believe need clarification. Furthermore, recent case law regarding the serious obstructions caused by Mr Van Hoogstraten, (*The Queen in the matter of Kate Ashbrook and East Sussex County Council, 2002*) has provided guidance which needs to be taken into account when the Council determines how to deal with obstructions.

4 The current stock of the booklet is considerably depleted but it is proposed that until the stocks are sufficiently drawn down to warrant a reprint these amendments will be added as an addendum.

5 The proposed amendments to the booklet are attached in the Appendix to this report.

### **RECOMMENDED:**

**That the amendments to the enforcement protocols contained in the Appendix be approved.**

Local Member	N/A
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Background Documents	N/A
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Available for Inspection at	N/A
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## **ADDITIONS AND AMENDMENTS TO PUBLIC PATHS AN A-Z OF PROBLEMS AND PROTOCOLS.**

### **Rope Across a Path.**

This is an infrequent problem but can be dangerous to path users. There is special provision in the 1980 Highways Act s162 to make this a specific offence. It is intended to amend the protocols to include a section dealing with this problem as follows:

*Where a rope has been placed across a public right of way, the rope will be removed by officers and the owner contacted. If removal of the rope will cause livestock to stray, rather than remove the rope immediately, the landowner will be contacted and asked to remove the rope. Failure to comply with the request to remove the rope or if the offence reoccurs following the removal of the rope and contact by officers the Council will consider prosecution of the offender. The Council will also remove the rope if encountered by officers on subsequent occasions. Highways Act 1980 s162.*

### **Obstructions.**

A closer definition of permanent obstructions as set out on page 10 of the booklet and of the way they are treated by the County Council is proposed.

Permanent obstructions will be regarded as substantial buildings and structures, which would require specialist engineering resources and considerable cost to remove. Fences, walls, timber and small buildings such as garages, sheds etc would not fall within this category. The decision as to whether or not an obstruction is permanent will be taken by officers of the Council.

Following judicial guidance given in the recent case of *Kate Ashbrook and East Sussex County Council 2002* it is clear that it is now necessary to weigh all the circumstances of the case when the Council determines how to respond. This will include the attitude of the offender to the offence. The amendments to the protocols currently dealt with in the section entitled “**Obstructions and encroachments which are more permanent**” on page 10 of the booklet are set out below:

### **Obstructions which are longstanding.**

*Obstructions of public rights of way are regularly encountered. The obstructions have often occurred through the ignorance of the landowner and/or the failure of the planning process. Indeed, many such obstructions are historical and have been inherited by the current owners. In these circumstances the Council will deal with the problem in the following manner:*

*Where the obstruction is minor\* it must be removed by the owner. If the owner fails to remove the obstruction within a period of time deemed reasonable by Council officers, enforcement action using powers available in Highways Act 1980 s143 will be taken and the obstruction removed. The costs of the enforcement action will usually be recouped from the offender. If the offence recurs prosecution of the*

*offender will also be considered. The County Council will only consider a request to divert the path following the removal of the obstruction.*

*Where the obstruction is substantial\* and it would be costly and impractical to remove it, the owner will be requested to apply for the diversion of the path rather than remove the obstruction. The Council will expect the owner to make an alternative route available whilst the diversion process is completed.*

*If the owner fails to acknowledge the problem, or does not co-operate with the Council to remedy it either by diverting the path or removing the obstruction then this failure will be given considerable weight. In these circumstances consideration will be given to prosecution and seeking a magistrates order to remove the obstruction.*

*If an application to divert the path fails then the Council will expect the original route to be made available by the owner. If the owner fails to do this then the Council will consider prosecution and seek a magistrates order to remove the obstruction. Highways Act 1980 s137, 137ZA and 143.*

*\*Council officers will determine whether an obstruction is minor or substantial.*

### **Obstructions which are more Recent.**

*From time to time obstructions occur during or as a consequence of development. Very often the offender has received advice from the County Council and planning officers but has chosen to ignore it. In these circumstances greater weight will be given to the behaviour of the offender before considering any proposal to divert the path.*

*Obstructions which are minor\* and can be readily removed will be dealt with by taking direct and immediate enforcement action using powers available in Highways Act 1980 s143 and the obstruction removed. The costs of the enforcement action will usually be recouped from the offender and consideration will be given to prosecution.*

*Where the obstruction is more substantial\* and it is costly and less practical to remove it then consideration will be given to prosecution and seeking a magistrates order to remove the obstruction.*

*Highways Act 1980 s137, 137ZA and 143.*

*\*Council officers will determine whether an obstruction is minor or substantial.*