

Amendments to “A-Z” “Public Paths a Guide to Problems and Protocols”

**INTRODUCTION;**

It is intended to amend the introduction to the leaflet in order to reflect the changes since Local Government Re-Organisation. It is also felt to be important to include a “rider” in relation to the legalities included in the booklet.

Proposed wording:

*This leaflet is intended to provide a guide to the Cheshire East Council’s protocols regarding issues and queries, including enforcement, which are commonly associated with Public Rights of Way. It is hoped that it will assist members of the public, landowners, path users and other interested parties to understand more readily some of the legislation which applies to Public Rights of Way and the manner in which Cheshire East Council is obliged to apply to legislation to the various issues.*

*The effectiveness of the legislation in protecting the Public Rights of Way network and the rights of the public depends crucially on the compliance of those regulated. In creating this leaflet and endorsing the Public Rights of Way Enforcement Protocol, the Cheshire East Council has adopted the central and local government “Concordat on Good Enforcement”.*

*The Public Rights of Way team is happy to provide advice and information in relation to Public Rights of Way issues. We are also open about how we go about our work. We will always be keen to discuss general issues or specific problems. We believe that prevention is better than cure and that our role involves actively working with both landowners and users. We will provide a courteous and efficient service and our staff will always identify themselves by name. Our staff will also provide contact details. In cases where disputes cannot be resolved without formal enforcement any right of appeal or complaints procedure will be explained, with details of the process and the likely timescale.*

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

**SURFACE:**

It is intended to alter the current wording in the booklet in order to make the Council’s and landowner obligations clearer in relation to the surface of Public Rights of Way. It will outline the steps that will be taken by Officers should the surface be unlawfully “disturbed”. It is also felt necessary to include new information regarding the enclosing of a route because if a path is enclosed

(i.e. by a fence or hedge etc) the responsibility for the surface of the path will alter. Information will also be given about when it will be appropriate for the Council to contribute to the re-surfacing of a route which is also used for private vehicular access.

#### Proposed Wording:

##### **Surface:**

*“Ownership” of the surface; The Cheshire East Council is the Highway Authority and as such, ordinarily\*, the surface of any Public Right of Way is “vested” in the Council. Effectively, the Council owns the surface in most cases. (\*See below Enclosure of a Public Right of Way).*

*“Disturbance” of the surface; The majority of Public Rights of Way do not have a bound or metalled surface and as such can be susceptible to damage by motor vehicles.*

*It is an offence to interfere with the surface of a Public Right of Way to the detriment of users. This means that a landowner/occupier may not dig up or even re-surface a Public Right of Way without the prior authorisation of the Council. Landowners/occupiers must ensure that their private use of the route; for example in motorised vehicles, does not damage the surface of the path. If damage is caused it must be re-instated by the landowner/occupier. (see also **Ploughing**)*

*How the Council will deal with this offence; For a first offence the Council will explain the law to the offender and advise about re-instatement of the surface. The offender will then be given an appropriate period\* to re-instate the surface to the satisfaction of the Council. \*The period given will be at the discretion of the Officer concerned and will be dependent on the level of damage and the works required. If there is a danger to the public immediate re-instatement will be required.*

*If the offender fails to re-instate the path or if the re-instatement is unsatisfactory a notice will be served giving a reasonable period for the surface to be properly reinstated. Failure to comply with the notice will result in the Council’s contractors carrying out the works with the costs being re-couped from the offender.*

*If the offence recurs the Council will immediately serve a formal notice requiring re-instatement, it will also consider prosecuting the offender.*

*Enclosure of a Public Right of Way; Where a Public Right of Way crosses previously unenclosed land and the landowner/occupier encloses his land e.g. by erecting a fence or planting a hedge alongside the path, he then becomes responsible for the maintenance of the surface of the route. He will also be responsible if an accident occurs due to problems with the surface.*

*If a path is enclosed in this way, particularly if the path is made very narrow, there can be problems with the surface falling into disrepair very quickly. If the surface does fall into disrepair the landowner/occupier will be required to make it good for example, by providing a better surface, carrying out drainage works or by increasing the width available.*

### **STILES AND GATES:**

On an enclosed route (e.g. a lane enclosed by hedges or fences), it was generally the case that a field gate across the route, should remain unlocked even though it may have a stile/gate available as an alternative alongside. This is because the full width of the route should be available to users at all times. Recent caselaw has indicated, however, that this is no longer the case. Where such a path leads directly onto the vehicular highway and there is a danger of livestock escaping onto that highway due to the field gate being left open, the landowner concerned is entitled to lock the field gate provided that there is alternative means of access alongside. That alternative means of access should be no more difficult to use than the field gate next to it. Therefore it should consist of a kissing gate or pedestrian gate, rather than a stile.

#### Proposed Additional Wording:

*Where a field gate crosses an enclosed Public Right of Way (e.g. a lane enclosed by hedges) it should remain unlocked even if there is a stile or gate alongside it. The locking of the field gate will generally be construed as an obstruction to the highway and dealt with as such.*

*There is an exception to this however: If the path in question leads directly to a vehicular highway and the locking of the field gate will prevent livestock escaping onto the road no action will be taken in relation to the locking of the gate provided that an alternative means of access, such as a kissing gate or pedestrian gate, is provided alongside.*

### **“CROSS COMPLIANCE” SINGLE PAYMENTS SCHEME:**

From 1 January 2005 eleven direct subsidy schemes for farmers were replaced with one new scheme; the Single Payment Scheme (SPS). The Rural Payments Agency (RPA) - an executive agency of the Department of Environment, Food and Rural Affairs (Defra) - is responsible for making payments under the scheme as the accredited paying agency in England. It has also been designated as the Competent Control Authority for the purpose of administering the cross-compliance arrangements.

To qualify for SPS payments farmers must meet a range of ‘Good Agricultural and Environmental Condition’ standards (GAECs). They must also comply with a number of specified legal requirements relating to the environment, public and plant health, animal health and welfare and livestock identification. These are referred to as Statutory Management Requirements (SMRs).

There are a total of 17 GAECs and 9 SMRs which, together, make up the cross compliance standards and requirements. Most of these reinforce existing law and do not require the farmer to do anything new.

Where breaches are identified, RPA as the paying agency may need to apply a reduction to the farmer's SPS claim. The size of this reduction will depend on the severity, extent and permanence of the breach, and whether or not the failure to comply with the requirements was intentional.

One area in which the RPA feel would be particularly beneficial is that of Public Rights of Way (GAEC 8). The RPA has observed that Public Rights of Way seems to attract much public interest and requires a significant amount of enforcement work. Reporting of breaches identified during the course of the Council's normal work would enable RPA to include consideration of such breaches in the approval process for SPS payments. This may be viewed also as being of benefit to the Council in the context of our responsibilities under the Highways Act 1980, by increasing the deterrent effect and, thereby, helping to maintain access and amenity value for the public.

It is suggested therefore, that where a landowner/occupier fails to comply with Public Rights of Way legislation e.g. by ploughing a path, by planting a crop across a path or by obstructing a path, it would be appropriate and useful for this breach to be reported to the RPA. Officers have considered the stage at which they feel it would be appropriate and even-handed to report an offender to the RPA. It is felt that it would not be reasonable to send a report at first instance and that it would be more equitable to do this if the landowner/occupier failed to comply with an enforcement notice. This means that the offender would have already been given the opportunity to comply on two occasions. In this way Officers would avoid the possibility of sending a report to the RPA about a landowner/ occupier who had unintentionally broken the law. The only offenders we would report are those who had been made aware of the requirements on two occasions and were clearly flouting the legislation.

#### Proposed Wording:

#### **Cross Compliance; Single Payment Scheme:**

*If a landowner/occupier breaches legislation in relation to Public Rights of Way he may also be in breach of the Department for Environment Food and Rural Affairs (DEFRA)'s Good Agricultural and Environmental Condition Standards (GAECs) and/Statutory Management Requirements (SMRs). DEFRA requires that these standards are met by landowners/occupiers in order for them to qualify for the Single Payment Scheme (SPS). If a landowner/occupier fails to comply with an enforcement notice issued by the Council in relation to Public Rights of Way, details of the offence will be sent to the Rural Payments Agency (RPA) and their SPS may be affected. Landowners/occupiers will be notified of the intention to report them to the RPA in the event of an offence in advance, so as to encourage co-operation.*