PEAK AND NORTHERN FOOTPATHS SOCIETY VOLUNTEER HANDBOOK SECTION 5

Section 5: Legislative guide for all Volunteers

1 Overview

1.1 The following notes provide a guide for all volunteers in relation to legislation commonly encountered in the work undertaken by the Society. The Courts & Inquiries Committee (C&IC) considers any enforcement activity that the Society may undertake[1]

1.2 Further reading on relevant legislation can be found in the "Blue Book" (Rights of Way. A Guide to Law and Practice, 4th edition; by John Riddall and John Trevelyan; published by The Ramblers' Association and Open Spaces Society).

1.3 Updates to the blue book are published on the Ramblers Association website-The Blue Book Extra - Ramblers. This should be consulted to see if there have been any changes to the pages quoted in this handbook. The Blue Book chapters and page numbers are quoted below, for easy reference.

1.4 A useful reference guide for inspectors is the Rights of Way Circular (1/09) found on the gov.uk website -Rights of way circular (1/09) - GOV.UK (www.gov.uk)

This document contains guidance on

Changes to rights of way

PAGE 2- Wildlife and Countryside Act 1981 s53,

PAGE 4- Highways Act 1980 s116,

PAGE 5- Highways Act 1980 s118,

PAGE 6- Highways Act 1980 s119

PAGE 7- Town and Country Planning Act 1990 s247 & s257,

Temporary closures of rights of way

PAGE 9- Road Traffic Regulation Act 1984 s14

Enforcement activity- keeping rights of way open and in good repair

PAGE 10- Highways Act 1980 s56

PAGE 11- Highways Act 1980 s130A

Authorised structures on rights of way

PAGE 13- Highways Act 1980 s147

[1] The terms of reference for the C&IC may be found on the Society website.

2 WILDLIFE AND COUNTRYSIDE ACT 1981 s53 - DUTY TO KEEP THE DEFINITIVE MAP AND STATEMENT ACCURATE BY PUBLISHING MODIFICATION ORDERS (Chapter 5, page 99 and page 546)

2.1 It is necessary to understand the difference between Public Path orders such as stopping-up, diversion and creation orders and modification orders. Public Path orders change the public's rights; modification orders change only the way in which public rights are legally recorded on the Definitive Map and Statement (DM&S); they do not change the actual public rights that exist on that path. They do not create a new or higher right, nor remove or downgrade a right.

Key Features of section 53

2.2 The surveying authority (the same council as the highway authority) has a duty to make modification orders to keep the DM&S accurate if it has sufficient evidence that the map and/or the statement are wrong.

2.3 This evidence can be found by the authority itself, or it can be presented to the authority in the form of a formal application made to the authority, in which case the authority will also look for other evidence itself.

2.4 The authority must make a modification order "as soon as reasonably practicable" after it finds this evidence, providing that the evidence is sufficient to allege on the balance of probabilities that the path is a public right of way.

2.5 There are two kinds of modification orders:

I. Legal event modification orders (LEMOs), which change the map and statement to show changes to public rights brought about by confirmed public path orders e.g. delete from the map and statement a public right of way which has been stopped up by means of a stopping up order, or diverting a public right of way. These LEMOs are purely administrative measures to which there can be no objection since the time to object was when the public path order was being made. The Society is not consulted about the publishing of a LEMO, but we do sometimes receive copies of LEMOs from a Highway Authority although there is no legal obligation to send them to us. Getting access to a LEMO, can be particularly useful where a new public right of way or a higher right has been created by a Creation Agreement under s.25 of the Highways Act 1980 between a landowner and Highway Authority, or by the dedication of a new public right of way or higher right by a Local Authority on its own land.

II. Evidential modification orders (DMMOs), which change the map and statement by:

- adding to them public rights of way for which evidence has been found which shows that they exist already but are not legally recorded e.g. by adding a footpath, or by adding bridleway rights to a footpath already shown on the map and statement, or
- deleting public rights of way which have been found based on evidence not to exist e.g. removing a footpath previously shown on the map and statement or removing bridleway rights from a bridleway, so that it is now shown as a footpath or
- changing the way a public path is shown on the map and statement e.g. adding a width to the description of a path in the statement or changing the location of a path (or part of a path) or adding/removing limitations on the public's use of the path.

2.6 The evidence which is relevant to the making of a DMMO can be:

- evidence of use of a path by the public as of right, i.e. without force, without secrecy and without permission, over a period of at least 20 years before that use was challenged. (In some circumstances a lesser period is acceptable).
- evidence obtained from documents such as enclosure awards, tithe apportionments, old maps etc
- a combination of user and documentary evidence

2.7 The basis on which the evidence found by or presented to the authority must be assessed to see if it is good enough to make an evidential modification order is usually on the "balance of probabilities" i.e. a weaker standard than the criminal one of "beyond all reasonable doubt", although there are some exceptions to this when an even lower standard is required (the Courts & Inquiries Officers (C&IO) will give advice about this).

2.8 If an authority publishes a DMMO, there is a 6-week period during which anyone may object to the order; such objections can only be made on the basis that the evidence is not sufficient to show that the order should be confirmed, or that the order is in some way technically deficient, or sometimes that the order should be confirmed but that modifications are needed before it is confirmed.

2.9 If objections are made to an order and these are not subsequently withdrawn, the authority must send the order to the Secretary of State at DEFRA, who will appoint an independent Inspector to assess all the evidence by means of written representations, a hearing, or a public inquiry; the Inspector's decision is final unless any aggrieved person obtains a High Court verdict that the order was wrongly confirmed.

2.10 It follows that the role of the Society in the implementation of s53 is to assist the surveying authority to collect evidence that a modification order should be made (or in some cases not made), and to help the authority to assess all the evidence; any views of the Society that the change to the DM&S which would be brought about by the order is not one that we want would be totally irrelevant.

Practicalities

2.11 The Society may itself make an application to a surveying authority if it feels that it has sufficient evidence for a modification order to be made to change the DM&S. The application would be made on an official form provided by the authority and in accordance with strict legal procedure. An application made in the name of the Society must have the approval of the relevant C&IO or the Consultations and Orders manager

2.12 When responding to a consultation about a modification order which an authority is considering making, or an order which the authority has made and is now seeking to confirm, the procedure is as follows:

- Look at the file (if there is one) for the history. If the Society was consulted before an order was made, your consultation response to a made order should reflect this unless there are good reasons to change it, and these reasons must be explained.
- If the proposed or made order would be/has been made to add a public path to the map and statement on the basis that there is evidence that the path has been used by the public as of right then, if you are able to do so, try to collect any further evidence of use (your own or

other people's) using the forms provided by the authority. If you or any other people you know have any evidence concerning the status of the path which is the subject of the order, then send that to the authority (this might be rebuttal evidence if the order seeks to upgrade a path to a higher status).

- Where the path which is the subject of the proposed order or published order has not been physically obstructed by the landowner, you should try to carry out an inspection (this should not be a problem where the order route already has some form of public status). In the unlikely event that you are challenged by anyone whilst carrying out the inspection, identify yourself as a volunteer acting for the Society and show the letter/published order received by the Society to the person challenging your use of the path. This can be a useful opportunity to gather information as to what rebuttal evidence the landowner might have. However, if you are asked to do so, withdraw from the path. Do not place yourself in any danger at any point in the proceedings and remain courteous in your exchanges.

2.13 On site you should:

- check that there are notices and plans displayed at both ends of the path which is the subject of a made order; if there are not, the authority must be informed
- check if there are any stiles, gates, steps or other structures along the path and tell the authority about these if it does not seem to have acknowledged their presence
- check that the width of the path agrees with the width stated by the authority, and let the authority know if it does not
- note any other relevant features which you feel should be drawn to the attention of the authority but remember that this does not include any feelings that you may have that the proposed change to the map and statement is undesirable.
- photos or video footage can be especially useful when on site, as an “aide memoire” when you come to draft your comments, to send to the relevant Authority or to another officer of the Society to help them.

2.14 This is one of the most complicated areas of legislation with which the Society is involved. Before you make any objection to a proposal to make an order or to a made order, you must consult the relevant C&IO.

3 HIGHWAYS ACT 1980 s116 - POWER OF MAGISTRATES’ COURT TO AUTHORISE STOPPING UP OR DIVERSION OF HIGHWAY (Part II page 477)

Key features of s116

3.1 This section allows a highway authority to make an application to a magistrates’ court for an order to stop up or divert any highway other than a trunk road. A section 116 order can also stop up a highway with the reservation of a footpath, bridleway or restricted byway e.g. only public mechanically propelled vehicular rights may be stopped-up. The Society’s view, shared by the Ramblers, is that these procedures are undemocratic and anachronistic. We should exercise our influence to try and persuade councils that the procedures under sections 118 and 119, where disputes are resolved by the Planning Inspectorate, are to be greatly preferred. This is recommended in paragraph 5.57 of DEFRA Circular 1/09 on Public Rights of Way.

Practicalities

3.2 **All** such applications **must** be referred to the appropriate Courts and Inquiries Officer for them to assess and respond to. They may be sent to the local Inspector for their comments.

3.3 The ground for a stopping up order is that the path is "unnecessary" for the public. This could be on the basis that the route no longer fulfils any useful purpose, e.g. because of redevelopment, the path no longer goes anywhere meaningful. Alternatively, the route may be claimed to be unnecessary because there is a reasonable alternative way meeting the purpose for which the public are using the existing way. This raises issues like that arising when a diversion is being sought under section 119, such as the comparative length, surface, gradient and attractiveness of the two paths.

3.4 The convenience or benefit to the landowner of stopping up the path is not a relevant factor, though that may well be the motive for the order being sought. Thus "unnecessary" is not the same as unwanted. Notice of an application under s116 must be given to a community or parish council for the area. Such a council can in effect veto the application by refusing to give their consent to the application being made.

3.5 The grounds for a diversion are that the diversion will be "nearer or more commodious to the public". Whether the diverted path is nearer is a question of fact. Whether the diversion is more commodious means whether it is more convenient, roomy, or useful to the public. The comparative width, gradient and surface of the original path and the proposed diversion will be pertinent. It is doubtful whether attractiveness of the path is a relevant consideration. The purpose and nature of the original way as compared to the diversion is relevant but as with a stopping-up application, not the convenience or benefit of the landowner.

4 HIGHWAYS ACT 1980 s118 - STOPPING UP OF FOOTPATHS, BRIDLEWAYS AND RESTRICTED BYWAYS (Chapter 7, page 178, Part II page 479)

Key features of s118

4.1 This section allows a highway authority to make a public path extinguishment order on the ground that the footpath, bridleway, or restricted byway is "not needed for public use".

Practicalities

4.2 **All** such applications **must** be referred to the appropriate Courts and Inquiries Officer for them to assess and respond to. They may be sent to the local Inspector for their comments.

4.3 The application will be based either on an allegation that the path is not needed for use by the public because it serves no sensible purpose; or that there is an equally convenient path nearby. The latter type of case gives rise to similar arguments as in the case of a diversion application under section 119, e.g. the extent to which the alternative way is suitable in terms of surface, length, gradient, and attractiveness. Note that the test is "not needed", not "not wanted"; an order can be confirmed even if there is, or would be, some use of the path.

4.4 In practice a crucial factor in a section 118 case is the extent of use by the public of the path whose closure is being sought. Evidence from local people who use the path is extremely important. Headcounts, i.e. statistics as to the use of the path, are an invaluable source of evidence. These need to be collected over several half-hour periods at various times of the day and an attempt should be made to ascertain why the path is being used.

4.5 Where the path is not used because it is obstructed this should be disregarded by the order-making authority. The issue then becomes what the use of the path would be if the obstruction were removed. To defeat the application, it will be necessary to obtain evidence that walkers would use the path if unobstructed, e.g. producing a petition or letters from local people.

5 HIGHWAYS ACT 1980 sS119 -DIVERSIONS OF FOOTPATHS BRIDLEWAYS, OR RESTRICTED BYWAYS (Chapter 7, page 181, Part II page 482)

Key features of section 119

5.1 This section allows highway and national park authorities to make orders to divert footpaths, bridleways, or restricted byways if it is satisfied that it is expedient to do so, either in the interests of the landowner and/or the public. For an authority to make a diversion under this section the proposal must comply with the certain tests.

5.2 The first ground for the diversion is that it is in the interests of the landowner and/or the public. It is normally self-evident that the diversion is in the interests of the owner, but this can be challenged if the interests given seem to be spurious. An example of a diversion in the interests of the public is where a path in need of repair is to be replaced by another route with better views and gradients. If it is claimed that the diversion is in the public interest and you do not agree, please state your reason.

5.3 The end points of the diversion should be on the same highway, or one connected with it and be substantially as convenient as at present. The first test is a matter of fact. The second, convenience test will depend on comparing the onward walking from or to the end point of the original route with that of the diversion, with respect to safety, distance, gradient, surface and links to other rights of way. With regard to safety, it is important that walkers are not exposed to increased danger from traffic as a result of the diversion, due to a reduction in visibility of walkers and drivers to each other, e.g. if the new exit point has no verge, is at a bend or where there is a high hedge, or walkers must use a dangerous narrow road with no footway to reach another public right of way, whereas the original route emerged opposite the continuation path, this should be noted.

5.4 Further tests are that the proposed path will not be substantially less convenient for the public and will not have an undue effect on public enjoyment of the path.

5.5 Consideration of convenience again involves comparing the original route with the diversion in terms of length, width, presence of barriers such as stiles, gradient and surface. In assessing this, account must be taken of the typical use of the path. A longer path in a rural area mainly used for recreational purposes may well be acceptable, whereas the same increase in distance in a more urban setting where the path is used to reach a village, bus stop or station may be unacceptable. If the diversion involves a significant increase in gradient, this may be a reason to object.

5.6 The replacement path should accommodate all existing users to a standard at least as good as the old route and be of similar character e.g. if a path is to be diverted out of a domestic curtilage into an adjoining field then the surface should be as firm under foot as the original path.

5.7 There should be no increase in the number of stiles and gates on the diversion. Where possible kissing gates should be used in preference to stiles. Ladder stiles are objectionable as an impediment to a wide range of walkers.

5.8 Public enjoyment depends on several factors. If using the diversion would deprive the walker of pleasant views, then this is matter for comment. Similarly, it should be noted where the original path has an historical character or features which would be lost by it being diverted.

5.9 In many cases a proposed diversion can be made more acceptable to walkers by minor changes. If that is the case, please include these in your report to the assessors.

Summary

5.10 To be acceptable to the Society the diversion should provide a positive improvement to the route or offer an alignment which is only marginally less satisfactory for walkers.

5.11 Comments on a proposed diversion should be restricted to matters pertinent to rights of way as set out above. Inspectors should avoid referring to personal matters such as previous experiences of the landowner or his or her character.

Practicalities

5.12 What if the definitive line of the path is not available for inspection?

5.13 Where a path is obstructed, some authorities will not consider a diversion application until the obstruction is removed. However, an exception is made where the path has been built over or subject to quarrying, as an application to divert may be the only practicable response to provide a replacement route for walkers. If the original route is not available, then the reason for this should be mentioned in the authorities' reasons for making the order' if these are given (this is not a legal requirement but is good practice). If this is not the case, then this should be mentioned in your report.

5.14 In some cases, the diversion will already be in place and being used by walkers. This is not necessarily objectionable, as a diversion may well be the only possible solution to a longstanding obstruction of the path. However, if the definitive line is obstructed by a readily removable barrier such as a fence or a wall, then it may be appropriate for the Society to request that the original route be made available.

5.15 Check the rest of the path being proposed for diversion and adjoining public rights of way. Inspectors should walk the whole length of the path, even when only part of it is subject to a diversion application. Any faults on the rest of the path such as it being obstructed or out of repair, should be reported. Whilst these are not valid legal reasons to object to the diversion, they need to be drawn to the attention of the authority with a view to ensuring that the diversion route is available to walkers. Landowners seeking diversions are usually anxious to foster goodwill with the authority promoting the order and with user groups. This can provide the basis for resolution of other problems on their land. Similarly, if a path providing a continuation from the diversion is obstructed or out of repair, this should be reported.

5.16 Assuming the diversion proceeds, once the order has been confirmed and come into effect, the Inspector should check that the works set out in the order have been carried out and that the diversion is waymarked. There should be a sign at either end of the diversion stating: 'This path has been officially diverted. Please follow the waymarks.'

6 TOWN AND COUNTRY PLANNING ACT 1990 SECTIONS 247 AND 257 – PUBLIC RIGHTS OF WAY AND DEVELOPMENT (Chapter 7, pp 196-202 and Part II pp 600 & 608)

Key Features of Sections 247 and 257

6.1 With certain exceptions, planning permission must be obtained before a development affecting a right of way can take place. Permission is granted by a planning authority or, in some cases, by the Secretary of State. Planning authorities are unitary authorities or, in non-unitary authority area, district or borough councils. The Peak District National Park Authority is also a planning authority. In the case of mineral applications - e.g opencast mining and quarrying, planning applications are determined by the county council or unitary authority.

6.2 s257 allows the relevant planning authority to make an order to stop-up or divert any footpath, bridleway, or restricted byway if it is satisfied that it is necessary to do so to enable development to take place in accordance with planning permission anticipated or granted[2] by the planning authority (or in some cases to enable development to be carried out by a government department in that authority's area without planning permission).

6.3 s247 provides that the Secretary of State may also make such orders, not only for footpaths, bridleways, and restricted byways, but for all categories of highway and a broadly similar procedure applies. Orders under either section can, if the order making authority considers it to be desirable, provide for the creation of an alternative highway for use as a replacement, or for an existing highway to be improved for such use.

Public Path Orders

6.4 Planning consent does not give the developer permission to obstruct or interfere with a public right of way in any way. In the absence of a Temporary Traffic Regulation Order, a separate Public Path Order is required under s257 (or occasionally under s247). If a volunteer believes that a right of way has been obstructed or interfered with, and that there is no confirmed Public Path Order or temporary Traffic Regulation Order authorising this, they should report this immediately to the Assessor, relevant AO, or C&IO who will contact the relevant planning authority. The authority will normally consult the Society at this stage. Inspectors will be asked to comment on whether stopping-up or diversion of the affected path is 'necessary' to allow the development to take place. The word 'necessary' means exactly that. In other words, without the stopping-up or diversion, the development could not go ahead, so a stopping up or diversion order must be made. If a volunteer feels that the development could go ahead without any diversion or stopping up, they should make this known to the Assessor, relevant AO or C&IO.

6.5 A pre-order making consultation or a made Public Path Order under s247 or s257 is not an opportunity to debate the merits or demerits of the development for which planning permission has (in most cases) already been granted. That opportunity should have been taken, if needed, at the planning application stage. A volunteer should be cautious if approached by people or organisations who think that the existence of a right of way can be used to dispute the merits of the development, no matter how controversial that development might be.

6.6 A Public Path Order under s247 or s257 can only be confirmed if a substantial part of the development, for which permission has been granted, remains to be completed. If a volunteer believes that the development has been completed or substantially completed in these circumstances, they should draw it to the attention of the relevant AO.

6.7 The Society can only justify an objection to an Order under s247 or s257 if we believe that one or more of these conditions apply

[2] The Growth and Infrastructure Act 2013 amended s10 of the TCPA 1990 to enable an order to be made before planning permission is granted ie in anticipation of planning permission. It also amends s259 of the Act so that a competent authority or the Secretary of State may not confirm an order until planning permission has been granted and so that an order may not be confirmed unless satisfied that it is necessary to enable the development to be carried out. Growth and Infrastructure Act 2013 (legislation.gov.uk) see also 2013 No. 2201 RIGHTS OF WAY, ENGLAND The Town and Country Planning (Public Path Orders) (Amendment) (England) Regulations 2013 that's sets out alternative wording for Orders made where planning permission is anticipated but not yet granted

- The diversion or stopping-up is not strictly essential to enable the development to be completed.
- The diversion or stopping-up will seriously inconvenience path users, because a satisfactory replacement path is not already available or will not be provided.
- The development for which permission has been granted has been completed, or substantially completed before the application for the Order has been made.

6.8 If the Society makes a formal objection to a s247 or s257 order, the order must be sent to the Planning Inspectorate to be determined. The Inspector must balance the harm done if the development cannot go ahead if the order is not confirmed, with the harm to the interests of affected people, such as walkers, if the order is confirmed. Therefore, it is essential that the C&IO representing the Society has a good case to support its objection.

7 ROAD TRAFFIC REGULATION ACT 1984 s14 - TEMPORARY PROHIBITION OR RESTRICTION ON ROADS (Chapter 7, page 219, Part II, pp 569 & 787)

Key features of section 14

7.1 A traffic authority (normally the highway authority) has power to make a temporary traffic regulation order to restrict or prohibit the use of any road (defined to include public highways such as public footpaths, bridleways, restricted byways or BOATs).

7.2 National Park Authorities (after consulting the relevant highway authority) also have powers to make such orders in respect of any public footpath, bridleway, byway or unsealed carriageway, but in practice the majority of temporary traffic regulation orders are made by the relevant highway authority.

Practicalities.

7.3 A temporary traffic regulation order may be made because there are works being done or proposed on or near the right of way. An example would be where a building is being constructed or repaired near a footpath and there is a danger to path users from this activity.

7.4 An alternative ground is that there is a likelihood of danger to the public not attributable to such works. An example would be where a footpath is seriously out of repair so there is a significant hazard to walkers, as in the case of an unsafe bridge.

7.5 In either case a notice must be displayed on the affected right of way explaining the effect of the order and giving details of any alternative route available.

7.6 The order may last for up to 6 months, but this may be extended by the Secretary of State. In practice this decision is made by a civil servant and extensions are readily granted, so that an order may be in existence for several years. There is no procedure for objections to be made but representations may be made to the traffic authority. Where an order is no longer required, but the affected right of way is still closed, this should be drawn to their attention.

7.7 Where a right of way has been closed by an order for an unreasonable period then the matter should be referred to the appropriate C&IO.

8 HIGHWAYS ACT 1980 s56 - NOTICE REQUIRING A HIGHWAY AUTHORITY TO REPAIR A HIGHWAY INCLUDING A BRIDGE ON A HIGHWAY. (Chapter 13, page 342, Part II page 464)

8.1 s56 proceedings are used as a last resort when a path or bridge is “out of repair”. s56 notices are issued by the appropriate C&IO on behalf of the society. The issue of such notices must have the prior approval of the C&IC or, in urgent cases, the authority of the Chairman and one other Trustee.

8.2 It is important to distinguish between “out of repair”, which is dealt with under this section and obstructions which are dealt with under s130A

Key Features of section 56

8.3 s56 notices are served on the relevant highway authority (HA) with respect to

- a highway recorded on the definitive map as a footpath, bridleway, restricted byway or byway open to all traffic.
- surface out of repair; see list below.
- bridge out of repair; see list below.

8.4 A s56 notice describes the out of repair surface or bridge and requires the HA to state whether it admits the relevant path or bridge is a public highway and publicly maintainable. Following service of the notice:

- The HA may respond with an admission that the path or bridge is a public highway and publicly maintainable (and also may state what action it intends to take to remedy the disrepair). Where an HA makes such an admission but then fails to remedy the disrepair, application may be made to the Magistrates’ Court, within 6 months of the HA’s admission, for an order requiring the HA to remedy the disrepair (and such an order would ordinarily be made where it is proved to the Court that the path or bridge remains out of repair).
- Where the HA fails to respond to a s56 notice within one month or responds with a denial that the path or bridge is a public highway or publicly maintainable then application may instead be made to the Crown Court for an order requiring the HA to remedy the disrepair (provided the Court finds the path or bridge to be a public highway and publicly maintainable).

Practicalities

8.5 Examples of conditions included in out of repair:

- impassable mud
- impassable water/flood
- rutted impassable surface
- deep holes
- vegetation growing out of the surface of the highway, which prevents safe and convenient use of the highway.
- any item making a bridge unusable or unsafe

8.6 Examples of conditions **not** included:

- obstructions
- overhanging vegetation
- stiles or gates in bad repair.

8.7 Note: A temporary traffic regulation order under s14 of the Road Traffic Regulations Act 1984 may provide evidence that the highway is out of repair or the bridge is unsafe (as applicable).

8.9 When an Inspector has reported a “path or bridge out of repair” and the HA has failed to act or provide a satisfactory plan of action within 3 months of the report, the matter should be passed to the appropriate AO or C&IO. The AO or C&IO will inspect the path or bridge and, providing all legal criteria are met, provide a report to the C&IC (where applicable) for consideration at its next meeting recommending that a s56 notice be served, preceded by an appropriate letter before action allowing the HA a further reasonable opportunity to remedy the disrepair.

9 HIGHWAYS ACT 1980 s130A - NOTICES FOR THE REMOVAL OF OBSTRUCTIONS ON PUBLIC HIGHWAYS (Chapter 13 - page 333, Part II, page 497)

9.1 Proceedings under s130A are used as a last resort when a highway recorded on the definitive map as a footpath, bridleway, restricted byway, or byway open to all traffic is “obstructed”. A s130A notice is issued by the appropriate C&IO on behalf of the Society. The issue of such notices must have the prior approval of the C&IC or, in urgent cases, the authority of the Chairman and one other Trustee.

9.2 It is important to distinguish between obstructions (see lists below), which are dealt with under this section and “out of repair”, which is dealt with under s56.

Key Features of section 130A

9.3 Section 130A proceedings enforce the obligations of the highway authority (HA) to assert and protect the rights of the public to the use and enjoyment of any highway for which it is responsible (s130(1) Highways Act 1980) and to prevent as far as possible, the stopping up or obstruction of that highway (s130(3) Highways Act 1980).

9.4 In summary, a Section 130A notice is served on the HA requiring it to secure the removal of the obstruction described in the notice. If no action is taken by the HA, the complainant can then apply to the Magistrates’ Court, after having given a further notice to the HA. The Court may then order the HA to take such steps as are necessary to secure removal of the obstruction.

9.5 The details of the procedure are set out in the Removal of Obstructions from Highway (Notices etc) (England) Regulations 2004 (SI No 370) including:

- Form 1: Initial notice from the complainant to the HA requiring it to secure removal of the obstruction.
- Form 2: Notice from the HA to the person responsible for the obstruction (to be served within one month of receipt of Form 1).
- Form 3: Notice from the HA to the complainant stating what the HA has done in response to Form 1.
- Form 4: Notice from complainant to the HA of intention to apply to Magistrates’ Court for an order requiring the HA to take steps for removal of the obstruction (to be served at least 2 months after but no more than 6 months after service of Form 1).
- Form 5: Notice from the Court to the HA ordering it to take steps to remove obstruction.

9.6 An HA that has been served with a s130A Form 1 notice may, as well as serving Form 2 on the person responsible for the obstruction, serve notice on that person under section 143 of the Highways Act 1980. This notice requires that person to remove the obstruction within a specified period (usually 4 weeks) on the basis that, if that is not done, the HA may enter the land, remove the obstruction and charge that person with the costs incurred. There are similar provisions under section 149 dealing with things deposited on the highway and under section 254 relating to vegetation overhanging the highway.

9.7 Where the complainant applies to the Magistrates' Court, the HA may raise a number of defences. Specifically, Section 130B(5) of the Highways Act 1980 provides that the Court may not make an order for the obstruction to be removed if the HA satisfies the Court that:

- The status of the obstructed way as a highway is seriously disputed. Note: If the way is recorded on the definitive map this defence is ordinarily not available to the HA. However, where an application has been made to delete the way from the definitive map on the basis it is not a public right of way, as provided for in section 53(3)(c)(iii) Wildlife and Countryside Act 1981, this may prevent the making of an order until that application has been determined by the HA.
- For some other reason the HA has no duty to secure the removal of the obstruction. Note: This may be because the path is out of repair rather than being obstructed or the interference with the public's right to use the highway caused by the notified obstruction is not significant.
- Under arrangements which the HA has already made, the removal of the obstruction will be secured within a reasonable time, having regard to the number and seriousness of other obstructions which the HA has a duty to remove. Note: This would require the HA to have a formal/approved enforcement policy and detailed data on other known obstructions.

9.8 There is a fee for making an application to the Magistrates' Court and if the application is contested by the HA a further fee is payable. In addition, costs will usually be payable by the losing party to the winning party. There can be an appeal to the Crown Court by any party, which would involve further costs. However, there is no fee involved in serving Form 1 and in many cases, this will suffice to cause removal of the obstruction by action of the HA.

9.9 If matters are not resolved satisfactorily after serving Form 1 the Society would ordinarily seek advice from a solicitor or barrister before proceeding to serve Form 4 and would also expect to have professional representation in subsequent Court proceedings. These steps will require the express approval of the Trustees.

Practicalities

9.10 List of obstructions included:

- walls, except where part of a building
- fences
- rubbish, or other things which constitute a nuisance deposited on highway
- machines, with or without wheels
- hedges
- blocked stile
- stile or gate in so poor a condition as to substantially prevent free access
- secured gate - e.g tied with baler twine
- overhanging vegetation

9.11 List of obstructions **not** included:

- buildings, temporary or permanent
- works for the construction of a building
- tent or caravan
- vehicle, or other temporary or moveable structure used for human habitation
- surface of highway out of repair

- ditch
- ploughing
- crops
- person obstructing the highway

9.12 When an Inspector has reported an obstruction and the HA has failed to act or provide a satisfactory plan of action within:

- 1 month for a dangerous obstruction or if the obstruction is on a well-used path
- or 3 months if the obstruction is not dangerous or the path is less well used

from the date of the initial report the matter should be passed to the appropriate Area Officer (AO). The AO will inspect the path and, providing all legal criteria are met, provide a report to the C&IO for consideration at the next C&IC meeting recommending that a s130A notice be served, preceded by an appropriate letter before action allowing the HA a further reasonable opportunity to procure the removal of the obstruction.

10 HIGHWAYS ACT 1980 s147 – POWER OF HIGHWAY AUTHORITY TO AUTHORISE THE ERECTION OF A STILE OR GATE (Chapter 9 page 26, Part II page 506)

Key Features of section 147

10.1 This section gives the highway authority the power to authorise the erection of a stile or gate for controlling the movement of stock. Stock includes farm animals such as cattle, sheep and horses. Authorisation cannot be given for other purposes e.g. to increase security or privacy of the landowner. The authorisation should specify that the structure complies with the appropriate British Standard. It should be a condition of the authorisation that it ceases to have effect should the need for stock control no longer exist.

Practicalities

10.1 A stile or gate on a public right of way may also have authority for its presence because the path was dedicated (came into being) as a public right of way with the structure already on it ; this may be recorded as a limitation on the definitive statement (the legal description of the rights of way) or may be inferred by looking at old maps which show a line across the path indicating the historic existence of a wall, hedge or fence which would have been crossed by a means of a stile or gate.

10.2 There may also be authority for the stile or gate if it was included in a public path agreement or order (a creation or diversion). Also, a highway authority may under s66(3) of the Highway Act 1980 provide a gate or stile to safeguard the public using the path e.g. to bar access to a footpath to motor bikes or the provision of a barrier where the path meets a busy road.

10.3 A highway authority may also install a stile or gate to enforce a temporary or permanent Traffic Regulation Order made under the Road Traffic Regulation Act 1984 e.g to stop motor vehicles driving on to a Byway open to all Traffic (BOAT).

10.4 The stile or gate will, however, not be lawful if the structure

- does not meet the criteria given in the authorisation e.g. it does not meet the British Standard Specification described in a public path order or agreement, or the specification laid down in a s147 authorisation or

- is not in a safe condition or is of a standard that causes unreasonable interference with the rights of someone using the way.

  In these cases, as the authority is not lawful a s130A notice can be served.

10.5 The Highways Act 1980 s146 requires any stile or gate across a public right of way to be maintained by the landowner in a safe condition and to a standard of repair required to prevent unreasonable interference with the rights of users. If the landowner fails in his duty under this section then the highway authority, after giving at least 14 days' notice, can do the work necessary and charge the cost to the landowner

10.6 The Equality Act 2010 places a requirement on public authorities (including highway authorities) when carrying out their functions, to make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do so, or to show that there are good reasons for not doing so. Disability should be construed widely to include restricted mobility through old age. The aim of the legislation is to ensure that any new structures that are introduced on a public right of way impose the least possible hindrance to access. The Act does not require the replacement of all existing stiles by kissing gates, although a programme of gradual improvement is encouraged. When a path is diverted or a new path created then the highway authority should insist on the least restrictive alternative where a hedge, fence or wall is crossed, unless there are good reasons for doing so e.g. preservation of an historic feature.