

June 2014

PUBLIC RIGHTS OF WAY

1. The purpose of this LTN is to give an overview of the law relating to public rights of way in England and Wales. It describes what they are, how they are created and issues that are particular to local councils. The LTN also briefly deals with other rights of way – permissive rights of way and private rights of way. Easements, which are private rights of way, are also dealt with in LTN 47 – Easements and LTN 57- Easements over Common Land and Village Greens.

What are public rights of way?

2. Members of the public can use a public right of way without the permission of the owner of the land. Public rights of way can be roads, paths or tracks, and can run through towns, countryside or private property. Members of the public can also cycle, drive a car or ride a horse on some public rights of way. Some public rights of way are maintainable at public expense.
3. Landowners and occupiers must ensure that a public right of way is not obstructed by crops, vegetation or anything else, that the route is identifiable and the surface is restored soon after cultivation.

The Definitive Map

4. The Definitive Map is the map of all public rights of way. Highway authorities (county councils or unitary authorities and in Wales, county boroughs and county councils) are required to maintain the Definitive Map in their area. The Definitive Map can be inspected at the highway authority's offices. In many counties, the Definitive Map, or part of it, is available on the highway authority's website. Four categories of rights of way are recorded on the Definitive Map:

- footpaths
- bridleways
- byways open to all traffic (BOATs)
- restricted byways

They are explained in paragraphs 9 to 14 below.

5. If a public right of way is shown on the Definitive Map and there is no subsequent stopping up order ending the public's right of way (see paragraph 27), then the public right of way is conclusive in law. But a public right of way may not always be on the Definitive Map. For example, there may be paths that are not on the Definitive Map that have acquired public rights of way as a result of many years of public use (see paragraph 20).
6. Under the Countryside and Rights of Way Act 2000 ('the CROW Act 2000') footpaths and bridleways that are not recorded on the Definitive Map by 1 January 2026, that have only been classified as a footpath or bridleway and that were in use before 1949 will automatically be stopped up on that date. Rights of way shown on the Definitive Map will be restricted on 1 January 2026 to the rights shown (e.g. a right acquired before 1949 to ride a horse over a footpath will be extinguished)
7. Pursuant to sections 60 to 62 of the CROW Act 2000 each highway authority outside London is required to produce a Rights of Way Improvement Plan and review it at least every ten years.

Types of public right of way

Highway

8. The most common type of public right of way over a defined route is a highway with separate areas for the passage of vehicles (a road) and for pedestrians (a pavement). Section 329(1) of the Highways Act 1980 ('the 1980 Act') confirms that '*the carriageway*' is the part of the highway for the passage of vehicles and that the

'footway' is the part of the same highway with a right of way by foot only.

Footpath

9. Section 329(1) of the 1980 Act confirms a *footpath* is a highway (not being a footway) on which the public have a right of way on foot only. There is no right to cycle or ride a horse on a footpath. It is a civil wrong to ride a bicycle or a horse on a footpath, and action could be taken by the landowner for trespass or nuisance by the user. However, it is not a criminal offence to do so unless there is a traffic order or byelaw in force.
10. Footpath users may take a pram, pushchair, wheelchair, a dog (if on a lead or under close control), stop to rest or admire the view, or take a short alternative route to get round an obstruction.

Cycle track

11. The Cycle Tracks Act 1984 allows a highway authority to designate a footpath as a cycle track. If the proposed cycle track crosses any agricultural land anybody who has a legal interest in that land must give their written consent to the making of the order.

Bridleway

12. Section 329(1) of the 1980 Act confirms a *bridleway* is a way over which the public have right to travel on foot, on horseback or leading a horse. They may also have a right to drive animals of any description along the way. Section 30 of the Countryside Act 1968 permits the riding of bicycles on a bridleway but does not "create any obligation to facilitate the use of the bridleway by cyclists".

Byways open to all traffic (BOATs)

13. Section 66(1) of the Wildlife and Countryside Act 1981 defines a *byway open to all traffic (BOAT)* as a highway over which the public have a right of way for vehicular and all other kinds of traffic but which is used by the public mainly for the purpose for which footpaths and bridleways are used.

Restricted byways

14. The CROW Act 2000 introduced a *restricted byway*. Section 48 of the CROW Act 2000 defines it as a highway over which the public have a right to travel on foot, on horseback or leading a horse, or by any vehicle (e.g. bicycles, horse-drawn carriages) except mechanically propelled vehicles (e.g. motorbikes or cars). Driving a motorised vehicle on a restricted byway can amount to an offence under the Road Traffic Act 1988.

Coastal paths

15. Section 296 of the Marine and Coastal Access Act 2009 ('the 2009 Act') provides for the creation of a pathway for the entire coast of England. This is under the control of Natural England and the Secretary of State. Natural England has reviewed its coastal access scheme. A revised version was approved by the Secretary of State in July 2013. See - <http://www.naturalengland.org.uk>
16. Once established, the coastal path will be maintained partly at public expense and partly at the expense of the land owner. This will normally be by agreement with the landowner, but Natural England has the power to require the landowner to do the work and to do it itself if the landowner fails to do so within a specified period.
17. Section 310 of the 2009 Act amends Part 1 of Schedule 5 to the Government of Wales Act 2006 to give similar powers to the Welsh Assembly in respect of the creation of coastal paths in Wales.

Creation of a public right of way

18. A public right of way can be created by:
 - dedication
 - prescription
 - agreement
 - order.

Dedication

19. A footpath, bridleway or restricted byway may be expressly dedicated by the owner as a public right of way. Paths created by express dedication since 1949 are not automatically maintainable at the public expense.
20. A way over any land that has been used by the public as of right for at least 20 years is deemed to have been dedicated as a highway pursuant to section 31 of the 1980 Act unless there is sufficient evidence that there was no intention during that period to dedicate it. The 20 years must be continuous immediately before the right to use the way is challenged. Pursuant to section 66 of the Natural Environment and Rural Communities Act 2006 (“the 2006 Act”), usage by a mechanically-propelled vehicle cannot now create a right of way. The 2006 Act was introduced after the decision in **Bakewell Management Ltd v Brandwood [2004]**. The House of Lords decided that a right of way may arise where mechanically propelled vehicles have used a route for the 20-year period, even where that use was without lawful authority and therefore an offence.
21. A local council that wishes to avoid a public right of way being created over its land by 20 years’ uninterrupted use should regularly monitor how its land is used and ensure that either any paths used are periodically closed or appropriate signs are placed to notify users that the use of the way is by permission not by right.

Prescription

22. For a right of way to be created by prescription, there must be use for at least 20 years continuously up to the date when the prescriptive right is claimed. Such rights must also have been exercised openly, without force nor under protest from the owner and without the land owner’s permission
23. Creation of a public right of way by prescription is rare because the same circumstances will deem creation by dedication pursuant to section 31 of the 1980 Act. Prescription is still important in respect of private rights of way or easements.

Agreement

24. Section 25 of the 1980 Act permits a county council, district council or London Borough (in Wales, a county council) to enter into an agreement (known as a 'Public Path Creation Agreement') with a landowner to create a footpath, bridleway or restricted byway over land in its area. The principal authority has to consult any other principal authority in whose area the land is situated but there is no provision for any one else to be consulted or to object. The agreement may include terms as to payment or limitations or conditions affecting the public right of way over it. The principal authority must give due notice of new public path creation in at least one local paper circulated in the area in which the land is situated. The route is automatically maintainable at the public expense.
25. Section 30 of the 1980 Act permits a parish council (or community council in Wales) to enter into an agreement with a landowner to create a highway over land in its area or in an adjacent parish (or community in Wales) if the council considers this would benefit its residents. The council is under no obligation to consult anyone. The path is not automatically maintainable at the public expense

Order

26. Section 26 of the 1980 Act permits a county council, district council or London Borough (in Wales, a county council) to make a "Public Path Creation Order" to create a footpath, bridleway, or restricted bridleway over land in its area if this would be convenient to local residents and if the principal authority has considered the effects of a new path on the land owner. A landowner may claim compensation for loss of the value in and enjoyment of the land. The order does not require anyone's agreement but if a landowner's rights are adversely affected by a proposed right of way or a claim for compensation under section 28 of the 1980 Act is likely, the principal authority should consult with the landowner. If there are no objections, the principal authority can confirm the Public Path Creation Order bringing the path into effect. However, where objections are made, the Order will need to be confirmed or refused by the Secretary of State (in Wales, the Welsh Assembly). Once created, the route is automatically maintainable at the public expense.

Changing and extinguishing public rights of way.

27. Public rights of way can be permanently “stopped up” or diverted. Pursuant to section 116 of the 1980 Act, a highway authority may apply to the magistrates’ court for an order to stop up a highway (entirely or reduce it to a footpath, bridleway or restricted byway or to divert a highway because it is “unnecessary “ or it can “be diverted so as to make it nearer or more commodious to the public...”). Notice of the application must be given to the parish (or in Wales, community) council for the area of the highway at least two months before it is made. A court order may result in the stopping up of a highway completely or reserve some form of public right of way. This process may be used, for example, to remove vehicular access whilst retaining a public right of access by foot and on horseback.
28. The 1980 Act permits a district or London Borough (or in Wales, a county or county borough) council to:
- stop up or extinguish a footpath, bridleway or restricted byway where it is not needed for public use (Section 118);
 - divert a public right of way where it can be shown that it is in the interest of the relevant landowner and/or the public to do so, but only where: i) the diverted route would not be substantially less convenient to the public; and ii) the diversion would not alter any point of termination of the path, other than to another point on the same highway, or a connected highway. The diversion’s effect on public enjoyment of the path must also be taken into account before a decision is made (Section 119).
 - extinguish (section 118A) or divert (section 119A) a public right of way that crosses a railway where it can be shown that it is in the interests of public safety, but only if it is not possible to make the crossing safe;
 - extinguish (section 118B) or divert (section 119B) a public right of way for reasons of school security, or for crime prevention in a designated high crime area;
 - divert a public right of way to protect a site of special scientific interest

(section 119D); or

- gate a public right of way to tackle anti-social behaviour (section 129A) but this does not extinguish the public right.

29. When a principal authority makes any of the above orders it must advertise the fact in at least one local newspaper for the area of the public right of way, notify the parish council or parish meeting (community council or community in Wales) for the area of the public right of way and give at least 28 days for objections and representations. If there are no objections the highway authority can confirm the order. If there are objections then the draft order must be submitted to the Secretary of State for confirmation or rejection.

Public rights of way maintainable at public expense

30. As mentioned above a right of way created by a principal authority will automatically be maintainable at the public expense. Other types of right of way can be made maintainable at public expense by a highway authority.

31. Section 228 of the 1980 Act allows a street works authority (County Council or unitary authority and in Wales County Council or County Borough) to declare a private street to be a highway maintainable at public expense. The authority then place "Adoption of Streets" notices at each end of the route. Only the owner of the street (or if more than one, the majority of the owners) has the power to object. If there is an objection, the street works authority can either discontinue or it can go to the magistrates' court for confirmation of the order.

32. Section 43 of the 1980 Act gives a power but not a duty to a parish council (community council in Wales) to repair and maintain footpaths and bridleways or restricted byways. However, this does not empower a parish (or in Wales, a community) council to improve an existing public right of way.

Public rights of way not maintainable solely at public expense.

33. Most public rights of way cross private land. Legal responsibility for them is shared by the landowner and the highway authority. The highway authority's legal

responsibilities under the 1980 Act include:

- keeping rights of way clear of obstructions
- maintaining the widths of paths restricted
- maintaining most bridges and culverts
- maintaining the surface of the path in a condition suitable for its purpose.

34. Landowner/occupier's responsibilities include:

- keeping rights of way clear of overgrowth on their land (i.e. hedges or tree branches across the path)
- maintaining any stiles and gates which are needed on the path (section 146 of the 1980 Act)
- not obstructing the right of way eg by growing crops
- ensuring that no misleading signs or notices are placed on or near a right of way
- providing bridges where new ditches are constructed

35. A principal authority will provide a grant of at least 25% (section 146 of the 1980 Act) towards the landowner's costs of repairing or replacing stiles and gates. Stiles and gates can be erected for stock control but not for security or other purposes and they cannot be erected at all on restricted byways and byways open to all traffic (BOAT).

36. Within a national park, the relevant national park authority is responsible for maintenance of rights of way.

Signs and shelters on public rights of way

37. Section 27 of the Countryside Act 1968 permits a highway authority, after

consultation with the owner or occupier of the land, to place signposts along a public footpath, bridleway, restricted byway or byway.

38. A highway authority may also erect signposts at points where a public footpath, bridleway, restricted byway or byway leaves a metalled (ie tarmac) road. Any other person, including a parish council (a community council in Wales) may erect a signpost on a footpath, bridleway or byway with the permission of the highway authority. The highway authority does not need to provide signposts at these points if the parish council (or chairman of the parish meeting where there is no parish council) for the area is consulted and agrees that such signposts are unnecessary.
39. Pursuant to Section 72(1) of the Road Traffic Regulation Act 1984, a parish (or in Wales community) council may, with the permission of the highway authority, provide on or near any road, other than a footpath or bridleway, traffic signs indicating—
- a stopping place for public service vehicles
 - a warning of the existence of any danger
 - the name of the parish or community or of any place in it
40. Section 72(2) of the Road Traffic Regulation Act 1984 permits a parish (or in Wales a community) council to provide on or near any footpath or bridleway, any object or device (not being a traffic sign) for conveying to users of that footpath or bridleway a warning of the existence of danger.
41. A parish council may also provide and maintain seats and shelters on any road, or on any land abutting a road, within the parish under section 1(1) of the Parish Councils Act 1957. Permission must be obtained from the landowner or the highway authority as appropriate.

Damage to public rights of way

42. Section 130 of the 1980 Act gives the highway authority the power to “assert and protect” a public right of way.

43. Section 130 of the 1980 Act also empowers a parish council (community council in Wales) to notify the highway authority of an alleged obstruction of, blocking of or encroachment on a public right of way and the highway authority must take action to remove it unless the highway authority concludes that the information is wrong.
44. In some circumstances landowners/occupiers of land are entitled to plough public rights of way, if it is not reasonably convenient to avoid them. This only applies to cross-field footpaths and bridleways. A landowner/occupier must not plough a field edge path or any byway. However, a field edge path may be ploughed to its minimum statutory width (see paragraph 50 below).
45. Where a cross-field footpath or bridleway is ploughed, it must be reinstated within 14 days of the first disturbance of the cropping cycle and 24 hours of any further disturbance such as harrowing and drilling.
46. Under section 57 of the National Parks and Access to the Countryside Act 1949 it is an offence to place any misleading sign on a public right of way likely to deter people from using it. Only the highway authority can prosecute the offender.

Width of public rights of way

47. There are no statutory rules which govern the width of public rights of way (except where ploughed see paragraph 50 below) and the width is a matter of fact to be determined on each occasion. The width may be set out in an historical document, or it may be the width of the way between boundaries such as hedges or fences. Alternatively, the width may be that which the public have customarily enjoyed.
48. In the absence of any of these measurements, a highway authority will normally require a reasonable width to be made available which would be sufficient for two users to pass, such as:
 - footpaths - 2 metres;
 - bridleways - 3 metres
 - byways - 5 metres.

49. An encroachment into the width of a public right of way is an obstruction and a criminal offence.
50. Statutory default minimum widths apply to rights of way in relation to ploughing and reinstatement following ploughing (Schedule 12A of the 1980 Act). These minimum widths are:
- headland (field edge) paths: footpaths - 1.5 metres;
 - bridleways - 3 metres;
 - byways - 3 metres.
 - cross-field paths: footpaths - 1 metre;
 - bridleways - 2 metres;
 - byways - 3 metres

Access land

51. The CROW Act 2000 created the right for the public to walk on “access land” - open countryside, registered common land and some areas of forest (see section 1 of the CROW Act 2000).
52. Members of the public can walk freely on access land and do not have to stick to footpaths or bridleways. Permitted activities include walking, running, climbing, birdwatching and picnicing. However, horse riding, camping, swimming and cycling are not allowed. Horse riders, cyclists and motor vehicles must keep to existing rights of way (Schedule 2 of the CROW Act 2000). Landowners and tenants are able to restrict or exclude public access to access land for up to 28 days per year (section 22 of the CROW Act 2000), whereas public rights of way must remain open at all times.

OTHER RIGHTS OF WAY

Permissive rights of way

53. Some rights of way can be used by the public only with the permission of the landowner. A permissive right of way can be created by written agreement between the land owner and a local council. Alternatively it can be created simply by the land owner allowing its use.

54. To ensure that it remains a permissive right of way, the land owner must take action to prevent the creation of a public right of way by prescription (see paragraph 22). This assertion of right is normally done by:

- erecting signs at either end of the permissive path stating that it is not a public right of way and setting out any conditions for the use of the path (such as times when it can be used);or
- physically closing the path for short periods. An example of this is locked gates on permissive rights of way on railway property on Christmas Day. This causes minimal inconvenience but shows that the rights of way are permissive only.

Private rights of way

55. Private rights of way over land are known in law as easements. They are rights over another person’s land and can only be used for the benefit of the adjoining land in question. These are dealt with in a separate Legal Topic Note (LTN 47 – Easements).

Other relevant Legal Topic Notes (LTNs):

LTN	Title	Relevance
42	Occupiers’ Liability	Distinguishes between legal duties owed to visitors and trespassers. Relevant to permissive paths, access land and stiles/signs on public rights of way.

43	Private Access to Council Land	Sets out further circumstances in which individuals may trespass onto council land.
47	Easements	Explains private rights of way and how they are created
53	Protection of Common Land	Sets out the powers of local councils to combat trespass with particular reference to common land and to the Human Rights Act 1998.
57	Easements over Common Land and Village Greens	Sets out the powers of local councils to grant easements over common land and village greens.
72	Highways	Sets out the powers of local councils in respect of highways.
82	Compulsory purchase orders	Sets out the procedure for local councils to compulsorily purchase land.
83	Neighbourhood Planning England	Sets out the procedure for obtaining a Neighbourhood Development Plan or Neighbourhood Development Order.