

Rights of Way

Notes for guidance on Rights of Way

Dorset County Council



Improving the quality of life for people in Dorset,
now and for the future



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Every effort has been made to ensure that the information contained in this booklet is correct. However, no responsibility can be accepted for any error or omission for the information contained in this publication.





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1. General

These notes supersede the booklet revised in 2004 and provide a brief general guide to rights of way law and practice.

2. The Definitive Map of Public Rights of Way

The Definitive Map shows public rights of way of the categories:-

-  (i) **Footpath**
-  (ii) **Bridleway**
-  (iii) **Byway (sometimes called a BOAT – Byway Open to all Traffic)**
-  (iv) **Restricted Byway**

The current Definitive Map for the County of Dorset was published on 29 September 1989. It is based upon the Revised Draft Map as modified by directives from the Secretary of State for the Environment for the North, South and West of the County. For the South and South East, it is based upon the original Definitive Map with changes made by the Revised Draft Map to which no objections were received.

Under Part 3 of the Wildlife and Countryside Act 1981, the Definitive Map must be kept under continuous review, being modified as a result of Dedication, Modification, Diversion, Creation and Extinguishment Orders made as they occur. Where a route is shown on the Definitive Map as a footpath or as a bridleway, that is conclusive evidence that it had that status at the date the map was published without prejudice to any question whether the public had at that date any other rights over it.

If anyone considers that a route has been wrongly shown on or omitted from the Definitive Map and Statement, they may apply to the County Council for a Definitive Map Modification Order.

Copies of the Definitive Map and the written statement annexed to it, which describes the paths shown on the map, may be inspected in the Public Library Dorchester, County Hall, District Council Offices, Area Offices and Parish Councils. These are on a scale of 1:25,000 or 2 1/2 inches to 1 mile. A working map of rights of way has been digitised and is available to view on www.dorsetexplorer.com. However, due to technical reasons there are inaccuracies in the mapping of rights of way on this digitised map.

The latest editions of Ordnance Survey maps e.g. the Explorer series also show rights of way but such maps are not conclusive in law and may not show the latest amendments consequent upon revision of the Definitive Map.

3. Categories of Public Rights of Way

There are four categories of public rights of way and these notes are confined to those four categories:-

A. Footpath

This is a path for walkers. If the physical conditions permit, a pram, pushchair, wheelchair or electric mobility scooter may be used on a footpath.

B. Bridleway

This is a way which may be used by horse-riders or walkers and, if the existing surface is fit, by pedal cyclists.

C. Byway Open to all Traffic

This is a way which is mainly used by people on foot and horseback, however, vehicles have a right to use the route; it may not be ploughed or gated. The Highway Authority has no duty to improve the existing surface for vehicular use beyond that required for the normal traffic of the area.

D. Restricted Byway

This is a way for walkers, horse-riders, horse drawn carriages and pedal cyclists and other non-mechanically propelled vehicles.

Note 1

It is a statutory offence to drive or ride a mechanically propelled vehicle other than an electric mobility vehicle along a restricted byway, bridleway or footpath without lawful authority.

Note 2

It is not a statutory offence to ride a horse along a footpath but a person doing so without the permission of the landowner commits a civil trespass and the landowner can order them off and, where appropriate, sue for damages.

Note 3

Bicycles may be used on public bridleways, restricted byways and byways. They have no right to use public footpaths and may be committing a trespass if they do. Cyclists must give way to walkers and horse-riders on a bridleway.

Permissive Paths

These are paths which a landowner has granted a specific agreement for the public to use. They are not recognised as public rights of way and are not recorded on the Definitive Map. The Highway Authority is not responsible for their maintenance and they can be closed at any time by the landowner. However, permissive path agreements can be entered into and maintenance responsibility transferred to local authorities.

4. Duties or Powers of Local Authorities

- (i) The ultimate responsibility for the assertion and protection of the rights of the public rests with the County Council
- (ii) The Definitive Map is produced and updated by the County Council
- (iii) Applications for the extinguishment, diversion or creation of public rights of way under the Highways Act, should be addressed to the County Council or, if within a Borough, the Borough Council who will consider the application and carry out the necessary process of consultation before making an order.
- (iv) **Planning Applications**
Parish Councils are always consulted about planning applications and can draw the attention of the District Council to any right of way that is affected by a planning application. District Councils have been requested to take account of public rights of way when considering applications and may divert rights of way under powers given by the Town and Country Planning Acts.

(v). **Parish Councils**

Parish Councils have the right to carry out the following:

- a** to undertake the maintenance of any public right of way in their parish
- b** to erect lighting on any such path
- c** to erect notices (other than traffic signs) on paths warning of local dangers so long as the notice is not misleading
- d** to report an unlawfully stopped up or obstructed right of way to the Highway Authority
- e** to prosecute anyone who wilfully obstructs the free passage along a public right of way
- f** to prosecute in cases where a path has been ploughed and cropped and not restored within the time allowed
- g** to insist a right of way is signposted by the Highway Authority where it meets a metalled road
- h** to forbid a proposal by a Highway Authority to apply to the Magistrates' Court for an order to stop up or divert a public highway
- i** to be consulted by the Highway Authority on all application orders to modify or re classify the Definitive Map
- j** to object to a modification or re classification order
- k** to signpost and waymark public rights of way on behalf of and with the consent of the Highway Authority
- l** to create new footpaths and bridleways over land within their ownership and adjoining Parishes by agreement with the landowner concerned.

5. Public Rights and Responsibilities

The public have the right to use public rights of way without let or hindrance but should observe "The Countryside Code" (paragraph 20). Public rights of ways are highways by definition and must, therefore, be used for bona fide journeys only.

Gates which are found closed should not be left open, because this can lead to the straying of stock with the consequent dangers of traffic injury and spreading of disease from one farm to another.

6. Dog Control

There is no statutory right to take a dog on public rights of way, but it is generally presumed that a dog is a usual accompaniment to a person. There is certainly no right to allow a dog to stray off the path.

The owner or a person in charge of a dog may be guilty of an offence if their dog is out of control or it injures a person whilst in a public place, such as a public right of way. (Section 3 Dangerous Dogs Act 1991).

Dogs can be a particular source of worry to farmers, who may shoot them if that is the only way to stop the worrying of livestock (Animal Act 1971 - Section 9). Dogs should, therefore, be kept under close control but not necessarily on a lead.

On access land dogs must be kept on a short fixed lead (2 metres or less) between 1st March and 31st July to protect breeding wildlife, and at all times when in the vicinity of livestock, for further information see section 23.

The Clean Neighbourhoods and Environment Act 2005 provides the power for District Councils and Parish Councils to make dog control orders such as fouling of land by dogs, keeping dogs on leads, the exclusion of dogs on land and the number of dogs which a person may take on to any land. Dog exclusion orders do not apply to highways including public rights of way.

Dog owners should remove faeces left by their dogs as this can be hazardous to livestock and is unpleasant for other users of the right of way.

7. Signposting and Waymarking

The County Council has a duty to signpost where a public right of way leaves a metalled road, except in those cases where the Parish Council agrees that no post is required. It is an offence under Section 131 of the Highways Act 1980 to damage such a signpost. The County Council has the power to waymark paths where the route is not obvious and may delegate this power to other responsible persons. Waymarking discs may be provided by Dorset County Council on request. Access land will be signed at entry points if landowner agreement for signage has been obtained.



Footpath waymark



Bridleway waymark



Byway waymark



Restricted Byway waymark



Open Access

8. Stiles and Gates

By Section 146 of the Highways Act 1980 any stile, gate or other similar structure across a footpath or bridleway must be maintained by the owner of the land in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of the persons using the footpath or bridleway.

The County Council must contribute not less than a quarter of any expenses shown to their satisfaction to have been reasonably incurred by the owner of the land in maintaining these stiles and gates. Dorset County Council has a policy to assist farmers and land managers in maintenance and installation of suitable stiles and gates where appropriate.

By Section 147 of the Highways Act 1980, the owner, lessees or occupier of agricultural or forestry land, or of land which is being brought into use of agriculture or forestry, may apply to the County Council for consent to erect stiles or gates on a footpath or bridleway to prevent livestock from straying. This section does not apply to any byway, which may not be gated, unless that right of way was originally dedicated to the public

subject to gates. Any unauthorised stile or gate erected on a footpath or bridleway and any such structure erected on a byway constitutes an obstruction and therefore an offence under Section 137 Highways Act 1980.

There is no statutory width or height for a stile or gate across a footpath, but clearly they must be erected and maintained so as to afford easy passage by the public using the footpath. British Standard BS5709 prescribes the dimensions of gaps, gates and stiles and should be adhered to.

Section 145 of the Highways Act 1980, provides that the minimum width for a gate across a bridleway is 1.5 metres, measured between the posts of the gate. Improvised gates, such as Bordered wire gates Hampshire gates, are not permissible. Field gates must be made so that they are reasonably convenient for the use of the public.

The Clean Neighbourhoods and Environment Act 2005 amends the Highways Act and provides the council with the ability to make "Gating Orders". Gating orders give authorisation to erect a gate or barrier across a public right of way where the right of way facilitates persistent criminal or anti-social behaviour.

9. Obstruction

It is an offence under Section 137 of the Highways Act 1980, for any person, without lawful authority or excuse, in any way wilfully to obstruct the free passage of a public right of way. This applies to any obstruction which renders passage by the public less easy than hitherto; and includes fences of all descriptions, temporary or permanent structures, excavations, machinery, posts or other things capable of causing obstruction.

Clearance of litter and abandoned vehicles from a Public Right of Way is a matter for the Environmental Services Department of the District Council to deal with.

10. Damage to Highways

It is an offence under Sections 131 and 131A of the Highways Act 1980, for any person, without lawful authority or excuse, in any way wilfully to damage a highway or to disturb its surface so as to render it less convenient for the exercise of the public right of way.

11. Ploughing and Cultivation

The 1990 Rights of Way Act requires that:

Ploughing

- (i) If a path follows the edge of a field or enclosure, the surface must not be ploughed or disturbed.
- (ii) If a path crosses a field or enclosure, the path may be ploughed or the surface may be disturbed if it is not convenient to avoid it, provided the surface is made good to at least its minimum width* and the line of the path is made apparent on the ground within:

14 days of the first disturbance for that crop or 24 hours of any second or subsequent disturbance unless a longer period has first been agreed in writing by the Highway Authority. The line of the path may be made clear by creating tractor 'tramlines' along the line of the path.

Cultivation.

Crops, other than grass, must not be grow on or overhang the minimum width* of a footpath, bridleway or byway so as to inconvenience the public or prevent the line of the path from being apparent on the ground.

*The following minimum widths only apply to the law on ploughing and cultivation:

footpath - 1 metre across the field, 1.5 metres at the field edge

bridleway - 2 metres across the field, 3 metres at the field edge

byway and restricted byway - 3 metres across the field, 5 metres at the field edge. It is the occupier's responsibility to comply with the law, regardless of who carries out the work.

The Highway Authority has the power to:

- (i) Enter on to the land to carry out works that are necessary to reinstate the path and recover the costs from the landowner.
- (ii) To prosecute a landowner who fails to comply with the law.
- (iii) Report the matter to the Rural Payments Agency.

12. Barbed Wire and Electric Fences

Section 164 of the Highways Act 1980 provides that where a barbed wire fence is erected on land adjoining a footpath, bridleway, byway or any other highway, which is likely to be a nuisance, the highway authority may

serve a notice in writing requiring the occupier to remove the barbed wire. If the occupier does not comply, the highway authority may apply to a Magistrates' Court for an order to do the necessary work itself and recover the cost from the occupier. (See also paragraph 19)

An electric fence across a right of way is an obstruction even if it is not 'live'. Any electric fence must be far enough away from a right of way that users on that way and their animals cannot inadvertently come into contact with it. In addition, appropriate warning signs must be displayed on or close to the fence to advise users of its presence.

13. Dangerous Excavations, Erections etc.

It is an offence to make dangerous excavations or erections on land adjoining a public path which have the effect of making the path unsafe for people using it.

Section 165 of the Highways Act 1980, empowers the Highway Authority to serve a notice on the owner or occupier of the land, requiring him to carry out the necessary work to render the path safe again. If the occupier does not comply, the Highway Authority may carry out the necessary work and recover the cost.

14. Overhanging Vegetation

Where a hedge, tree or shrub overhangs a public right of way so as to endanger or obstruct the free passage along the way, it is the duty of the occupier of the land to lop or cut back the overgrowth. Under Section 154 of the Highways Act 1980 the Highway Authority may require the occupier in writing to carry out such work and if, subject to any appeal, the work is not carried out within a reasonable period, they may do the work themselves and recover the cost from the occupier.

15. Bulls

The only bull allowed in a field crossed by a public right of way is:

- (i) a bull under 10 months old
- (ii) a beef bull accompanied by cows or heifers.

Any other bull or situation is an offence under Section 59 of the Wildlife and Countryside Act 1981.

16. Misleading Notices

If any person places or maintains on or near a footpath, bridleway or byway, a notice containing any false or misleading statement likely to deter the public from using the way, he shall be liable on conviction to a fine (Section 57 National Parks and Access to the Countryside Act 1949, as amended).

Similarly, if any person places or maintains on or near any access land a notice containing any false or misleading information likely to deter the public from exercising their CROW rights, he shall be liable on conviction to a fine (Section 14 Countryside and Rights of Way Act 2000).

17. Bridges

Responsibility for the maintenance and repair of bridges carrying roads rests with the County Council but where a private vehicular bridge carries only footpath or bridleway rights, the County Council will contribute 5% or 10% respectively towards approved maintenance or agreed improvements.

18. Extent of Maintenance of the Surface of Rights of Way

The Highway Authority is responsible for the maintenance of the surface of rights of way to the extent that they are safe and fit for ordinary public traffic, having regard to the nature of the user and the character of the way.

Where a private vehicular track carries only footpath or bridleway rights, the County Council will contribute 5% or 10% respectively towards approved maintenance or agreed improvements.

If a Parish Council considers that a right of way needs to be improved, say by laying gravel or tarmac, to a higher standard than would normally be found on a rural path, then the County Council will seek a 50% contribution towards the cost from the Parish Council.

19. Widths of Footpaths and Bridleways

There is no statutory definition of the width of a public right of way except where the width of a public right of way is recorded in the Definitive Statement.

Where a right of way has been confined by hedges or fencing of ancient origin, then in the absence of other evidence, the width which the public is entitled to use can be taken to be the full width between the boundaries.

In the absence of other evidence, the County Council holds that it is reasonable for the minimum width to be 1.5 metres for a footpath and 2.5 metres for a bridleway. An additional 0.5 metres shall be provided on each side where these ways are bounded by barbed wire fencing or electric fencing. When new paths are created or existing path diverted the County Council will set a width of 2 metres for a footpath and 4 metres for a bridleway. An additional 0.5 metres shall be provided on each side where these ways are bounded by barbed wire or electric fencing.

These minimum widths must not be confused with the minimum widths stated in the 1990 Act - the law for ploughing and cultivation (paragraph 11).

20. Cross Compliance

When claiming under the Single Payment Scheme administered by the Rural Payments Agency (RPA), landowners are required to meet all their legal obligations on the maintenance of public rights of way, including rights of way on land set-aside. It should be noted that if landowners do not comply with legislation then the payments to the landowner from the RPA can be reduced.

21. Rights of Way Improvement Plans

The County Council has a duty to publish a Rights of Way Improvement Plan every 10 years. The plan will address the present and future needs of public access including access for those with disabilities. Parish Councils, agencies, authorities and user groups will be consulted prior to the drafting of the final plan.

22. Access for Those with Disabilities

The Rights of Way takes into account the needs of people with physical disabilities when carrying out improvements to the rights of way network such as replacing stiles with gates.

23. Open Access

'Open access' is a right for people to go on foot onto access land (or using a wheelchair, pushchair or mobility vehicle), for the purpose of open air recreation. It has often been referred to as 'right to roam', though this may be misleading, as the right only applies on specially mapped 'access land'.

Access land

Access land is the name given to areas where the open access right applies. Open country, registered common land and land dedicated by the landowner have all been mapped as access land. 'Open country' includes downland, heathland, mountain and moorland, and does not include cultivated fields or woodland (unless dedicated by the landowner).

In Dorset much of our access land is downland, common land or heath, with some woodland dedicated by the Forestry Commission. These areas often include special habitats with their own special wildlife; they may also be managed for game birds, or may be part of a working farm where animals graze. Not all access land is easily accessible, or especially suitable for recreation, as it was mapped due to the nature of the land rather than for its accessibility.

Excepted land

Some areas that are shown on the maps of access land are 'excepted', with no right of access. These include, for example, working quarries, ploughed fields, gardens and anywhere within 20 metres of a dwelling.

Up-to-date maps of access land can be viewed online at www.countrysideaccess.gov.uk Recent OS Explorer maps also show access land, but the 2004 editions do include some areas that are no longer access land, especially in West Dorset.

Sometimes people's right of access may be restricted, for example for land management, nature conservation or public safety reasons. The online maps show any temporary restrictions that may be in place.

Dogs on access land

- (i) Dogs on access land must be on a lead near farm animals, as even friendly family dogs may get a spontaneous urge to give chase (and then farmers may legally shoot them; animals disturbed by

dogs may miscarry even if they are not actually attacked).

- (ii) Between 1st March to the 31st July dogs must be on a lead to protect ground-nesting birds like skylarks, nightjars and woodlarks, as young may die through predation or natural causes if parents are scared off the nest.
- (iii) Dog walkers can be a great asset on access land, but dog mess causes serious problems and a lot of bad feeling due to the risks to human health, young children are particularly vulnerable. Even in remote areas the health of grazing animals is put at risk through disease or miscarriage if dog mess is not picked up. 'Bag it and bin it' (definitely don't abandon it once bagged) is the best option.

Rights of Way on access land

Where a right of way crosses access land the right of way has the 'higher right'. This means that open access rules and restrictions do not apply on the line of a right of way crossing access land; instead, the usual rights and rules for that type of right of way apply.

For further information about access land go to the open access pages on www.dorsetforyou.com and www.countrysideaccess.gov.uk

24. Dorset Local Access Forum

The statutory forum in Dorset is a joint forum consisting of Dorset County Council and the unitary authorities of Bournemouth and Poole. The forum advises all three authorities on all forms of access, open-air recreation and rights of way improvement plans. The forum has 18 independent members and 1 councillor from each of the authorities. It meets at least three times a year at venues throughout the county and all meetings are open to the public. Representations may be made to the forum providing at least three weeks notice before the meeting date is given to the secretary of the meeting. For details of members and meetings visit www.dorsetforyou.com/laf

25. Summary

Generally, therefore, it is the duty of landowners or occupiers not to endanger or inconvenience users of rights of way and access land areas. There are penalties for non-compliance.

Landowners or occupiers must not:-

- (a) Obstruct or damage rights of way (Para 9 & 10)
- (b) Plough a headland path or byway or allow crops to grow or overhang the minimum width of the path (Para 11)
- (c) Erect barbed wire where it might be dangerous to users of a path (Para 12)
- (d) Make excavations or erections likely to make a path unsafe (Para 13)
- (e) Permit a bull to be at large in any field or enclosure through which a public right of way passes except as stated in paragraph 15
- (f) Erect misleading notices (Para 16)

Landowner or occupiers must:-

- (a) Keep stiles and gates in good repair (Para 8)
- (b) Lop or cut back overgrowth endangering or obstructing the free passage of a right of way (Para 14)
- (c) Ensure the line of the path is apparent on the ground when ploughing and cultivating (Para 11)

Countryside users must:-

- (a) Stay on the course of a right of way or within the boundaries of access land and use it only in the manner allowed by its status (Para 3 & 5)
- (b) Keep their dogs under close control and on a lead where required (Para 5 & 6)
- (c) Leave gates as they find them (Para 5 and 26)
- (d) Comply with restrictions when exercising their CROW access rights (Para 5)
- (e) Follow the Countryside Code (Para 26)

Self Help with Obstructions

If when using a right of way you find an obstruction, first check that you are on the correct route. It is permissible to make a slight deviation to avoid the obstruction and this is often the best thing to do. You should report the obstruction to the Rights of Way Liaison Officer of the Parish in which you found the obstruction or to the Rights of Way Section at Dorset County Council.

Please address your reports to:

Rights of Way,
Environmental Services,
Dorset County Council,
County Hall,
Dorchester,
Dorset
DT1 1XJ

Telephone: (01305) 224463

Alternatively fill in the online report form at www.dorsetforyou.com

26. Follow the Countryside Code

Code for the Public

- Be safe – plan ahead and follow any signs
- Leave gates and property as you find them
- Protect plants and animals, and take your litter home
- Keep dogs under close control
- Consider other people

Code for Land Managers

- Know your rights, responsibilities and liabilities
- Make it easy for visitors to act responsibly
- Identify possible threats to visitors' safety

For further information visit www.countrysideaccess.gov.uk



Rights of Way

rightsofway@dorsetcc.gov.uk

www.dorsetforyou.com/footpaths

All leaflets can be made available in audio tape, large print and Braille, or alternative languages on request.



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