Rights of Way Enforcement Procedure for Land Managers
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1 Introduction

1.1 What is the relevant law?


On agricultural land from 1st January 2005 existing Common Agricultural Policy subsidy payments were replaced with one single payment scheme. To qualify for this payment land managers must meet a range of 'Good Agricultural and Environmental Condition' standards, known as 'cross compliance' and which include protecting rights of way.

1.2 How does it affect me?

Legislation imposes certain responsibilities on land managers regarding the safety and availability of rights of way.

This guide applies to any land manager with rights of way on his/her land. For the purpose of this guide land managers include farmers, landowners, tenants and occupiers, householders, businesses and developers.

1.3 What is Suffolk County Council’s role?

As a highway authority Suffolk County Council has a duty to assert and protect the rights of the public to enjoy any right of way.

The county council believes that, in the interests of openness, if it has to take action against land managers to resolve rights of way problems, it should state clearly and publicly how it will do this. This guide has been developed to do this.

1.4 Who approved this guide?

This guide (and associated leaflet) has been discussed and agreed by the National Farmers Union, Country Landowners and Business Association, Suffolk Agricultural Association and the Suffolk Local Access Forum (a forum including users, land managers and local communities).
2 What types of infringements are we talking about?

There are three main types of infringement committed on rights of way:

1. Disturbance of the surface of a right of way without lawful authority or excuse.
2. Obstructing a right of way.
3. Failure to maintain a structure, such as a stile or gate across a right of way which is the land manager's responsibility.

These three types of infringement also reflect the types of breaches of cross compliance outlined in Defra's Cross Compliance Handbook (Good Agricultural and Environmental Condition 8).

2.1 Disturbance of the surface of a right of way without lawful authority or excuse

It is an offence to disturb the surface of a right of way without lawful authority or excuse.

On agricultural land the Highways Act 1980 (as amended by the Rights of Way Act 1990) allows the ploughing or other disturbance of the surface of a cross-field footpath or bridleway for agricultural purposes, where this cannot be reasonably avoided.

The surface must then be restored to a condition 'reasonably convenient' for the designated use within 14 days of the initial disturbance or 24 hours of any subsequent disturbance. This must be done over at least its minimum width (see below). The line of the right of way must be indicated on the ground to not less than its minimum width so that it is apparent to the public. It must remain convenient to use at all times.

There is no right to disturb the surface of a field-edge (headland) right of way, or any part of a byway or restricted byway, regardless of where it runs.

Widths: Unless a path already has a legally recorded width (which the county council can advise on) the minimum and maximum widths for footpaths, bridleways, byways and restricted byways on agricultural land apply:

<table>
<thead>
<tr>
<th>Type</th>
<th>Footpath</th>
<th>Bridleway</th>
<th>Byway / Restricted Byway</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cross-field</td>
<td>1m – 1.8m</td>
<td>2m – 3m</td>
<td>3m – 5m</td>
</tr>
<tr>
<td>Field edge</td>
<td>1.5m – 1.8m</td>
<td>3 m – 3m</td>
<td>3m – 5m</td>
</tr>
</tbody>
</table>

The highway authority can enforce between the minimum and maximum widths.
2.2 Obstructing a right of way

There is no right to obstruct or otherwise deter the use of a right of way.

Examples of rights of way infringements where the county council can take action include:
- Crops obstructing a right of way.
- Construction of ditches and other excavations which disturb or obstruct a right of way.
- Soil and other materials deposited on the right of way.
- Allowing overhanging vegetation or the planting of trees and hedges to restrict use of a right of way.
- Deterring use of a right of way by the public e.g. verbally or by misleading signs.
- Electric and other fences obstructing a right of way.
- Structures constructed across or affecting a right of way.
- Barbed wire alongside a right of way.
- Any animal considered to be a threat to the public.

Where a crop, other than grass, has been sown or planted on any agricultural land, the land manager must take steps, as and when necessary, to make sure that:
- The line of the right of way is apparent to anyone wishing to use it.
- The right of way remains convenient to use at all times.

Crops that fall in, such as oil seed rape, should be cleared beyond the minimum width for the right of way (see table above) to ensure that the minimum width is clear at all times.

Land managers who need to clear ditches or carry out an engineering operation on agricultural land which affects a right of way must contact the county council.

The county council may authorise structures (e.g. gates) to control the movement of animals on agricultural land and for the breeding and keeping of horses. Land managers should contact the county council for further details.

In order to meet requirements of disability legislation the county council makes every effort to ensure that, as far as is reasonably practicable, rights of way are barrier free. When approving an application to install a structure the county council will normally authorise the least restrictive option.

2.3 Failure to maintain a structure

Land managers are normally responsible for maintaining structures e.g. stiles, gates, kissing gates, across rights of way. They must ensure that they are maintained in a safe condition and are easy to use. The county council will make a contribution towards the maintenance of structures it has previously approved.

Note: Footbridges and bridle bridges are normally the responsibility of the county council. Vehicular accommodation bridges are normally the responsibility of the land manager.
Advisory notes:

It is the responsibility of land managers to ensure their agents and contractors understand and comply with rights of way law when working on their land.

Where land managers experience nuisance or anti-social activities (e.g. fly tipping or abandoned vehicles) on rights of way they should contact their borough or district council.

3 What is Suffolk County Council’s enforcement procedure for dealing with rights of way infringements?

3.1 First infringement

Where the county council has not contacted the land manager regarding a rights of way infringement in the previous three years, a rights of way officer will, where reasonably possible, contact the land manager and give a full explanation of their rights of way responsibilities. This will be followed up by a letter which specifies the work required by a land manager to rectify a problem within specified time limits.

3.2 Failure to comply / second or further infringement

The county council may use one or more of the following options:

a. Legal notices (served under the appropriate statute). These will either:

   a. Specify the work required by a land manager to rectify a problem within specified time limits. Failure to do so will lead to the county council carrying out the works and recovering the associated costs from the land manager, e.g. one month is given to remove an unauthorised structure from a right of way before the county council is allowed to complete the works and recharge the land manager, or

   b. Where a right of way has been disturbed without lawful authority or a crop is obstructing the path, give notice of entry onto land in order to undertake works (and recharge costs). For example where a cross-field path has been disturbed without lawful authority the county council must give not less than 24 hours notice that it will enter onto the land and undertake works. In this situation the county council will, however, give two working days notice of entry. If the work has been completed by the land manager in that time and the appropriate rights of way office has been informed (details given on the legal notice), the county council will not recharge costs already incurred.
b. **Prosecution.** A land manager may be prosecuted by the county council where there is a record of repeat offending or the problem is such that it justifies an immediate prosecution.

c. **Conditional caution.** A land manager may be served with a conditional caution as the county council’s response to a persistent failure by that land manager to rectify a problem which is regarded by the county council as a criminal offence. The conditional caution may specify the remedial work required to be completed within a time limit. The county council will maintain a record of the conditional caution issued.

A conditional caution will be considered when appropriate prosecution criteria are met but the circumstances surrounding the infringement are such that a more lenient approach is appropriate. If the offer of a conditional caution is rejected by the land manager the county council will commence a prosecution against him/her.

Interviews for prosecutions and conditional cautions will be carried out under the Police and Criminal Evidence Act, 1984.

d. **Written warning.** If a legal notice is not complied with, or as an alternative to it, the county council may serve a land manager with a written warning. The letter will specify that the land manager’s failure to rectify the problem amounts to an offence. Enforcement action will follow if the problem is not rectified within a specified time limit.

Formal cautions, prosecutions and written warnings will be authorised by the county council’s Director of Environment and Transport in consultation with the council’s Head of Legal Services.

When considering either a conditional caution, prosecution or written warning the county council will take into account:

- Repeat offending
- The seriousness of the offence
- Lack of co-operation

Events outside the control of a land manager which result in a problem for which the land manager is responsible e.g. a tree blowing across a right of way, would not be seen as enforcement matters provided that the problem is rectified as soon as is practicably possible.
3.3 What constitutes a first, second or further offence?

If, following a first offence a land manager commits no further infringements in the next 3 years, any subsequent infringement will be regarded as a first offence. For example, if the county council started to pursue a first offence in July 2005 in year 1, an offence committed in August 2008 in year 3 would be treated as a first offence if there had been no interim infringement by that land manager. In the same situation, an offence committed in May 2008 would be treated as a second offence.

The county council works well with most land managers in Suffolk and is unlikely to initiate more serious enforcement action over what it considers to be a minor slip up.

3.4 Will Suffolk County Council recover costs following service of notice?

If the county council has to complete works following the service of a notice the council will normally seek to recover all its costs.

4 How will Suffolk County Council deal with cross compliance?

Where it is found that a cross compliance standard has not been met, and the breach is not of a technical or very minor nature, the Rural Payments Agency has a duty to apply a penalty to the single payment the land manager is receiving.

Where the county council serves a legal notice, issues a conditional caution and/or commences a prosecution on a matter that is covered by cross compliance, the information will be copied to the Rural Payments Agency and further action may be taken by them.

Enforcement information copied to the Rural Payments Agency will include details of any action taken by the land manager to rectify the offence.

It should be noted that not all land is subject to cross compliance.

5 How can I find out more?

Telephone Suffolk County Council on 0345 606 6167

Email – customer.service@suffolk.gcsx.gov.uk

Web site - http://publicrightsofway.onesuffolk.net/

The county council has also produced a leaflet which summarises the information given in this procedure. To obtain a copy please use the contact details given above.

Tractor cab stickers are also available from the county council.
Suffolk County Council aims to work in partnership with all stakeholders to improve access on urban and rural public paths for all sections of the population.

We offer a telephone interpreting service. To use it, phone 0845 6 066 067. Leave your name, language and phone number and a translator will call you back.

我們設有電話傳譯服務，如欲使用，請撥電 0845 6 066 067，留下你的姓名、所用語言和電話號碼，便會有翻譯員回覆你的。

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