

Public Document Pack



PLYMOUTH LOCAL ACCESS FORUM

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PLYMOUTH LOCAL ACCESS FORUM

DATE: MONDAY 8 FEBRUARY 2010

TIME: 10.00 AM

PLACE: WARSPITE ROOM, COUNCIL HOUSE

Committee Members–

Mr Fairchild, in the Chair

Mr Stewart, Vice Chair

Mr Attrill, Cllr Berrow, Cllr Browne, Mr Emery, Goddard, Ms Hitchens, Mr Loze, Mrs Mewton, Mrs Mickley, Mr Pawley, Ms. Roberts, Mr Skinner and Cllr. Wheeler

Members are invited to attend the above meeting to consider the items of business overleaf

Members are requested to sign the attendance list at the meeting.

PLYMOUTH LOCAL ACCESS FORUM

1. APOLOGIES

To receive apologies for non-attendance submitted by Forum Members.

2. APPOINTMENT OF FORUM CHAIR AND VICE CHAIR

To appoint a Chair and Vice Chair for the forthcoming year, term of office commencing on 29 March 2010.

3. DECLARATIONS OF INTEREST

Members will be asked to make any declarations of interest in respect of items on this Agenda.

4. MINUTES

The Forum will be asked to confirm the accuracy of the minutes of the 7 December 2009.

5. CHAIR'S URGENT BUSINESS

To receive reports on business which, in the opinion of the Chair, should be brought forward for urgent consideration.

6. FORWARD WORK PROGRAMME

To consider suggestions from forum members' for inclusion in the forward work programme.

7. PLYMOUTH LOCAL ACCESS FORUM ANNUAL REPORT

To consider a draft annual report.

8. RIDGEWAY SCHOOL PUBLIC PATH NO.2 EXTINGUISHMENT ORDER

To consider and vote on a position statement on the Ridgeway School public path No. 2 extinguishment order. (4.8.1 Guidance on Local Access Forums in England).

9. DISABILITY DISCRIMINATION ACT 1995 (Pages 1 - 32)

To consider a response to a DEFRA consultation on the Disability Discrimination Act 1995 (guidance on path furniture).

10. CORRESPONDENCE (Pages 33 -

To consider any correspondence received and note any correspondence sent by the Forum.

11. WORKING GROUPS:

(a.) POTENTIAL RIGHTS OF WAY WORKING GROUP

To receive a report from the Working Group.

(b.) PLANNING WORKING GROUP

To receive a report from the Working Group.

12. DATE OF NEXT MEETING

The next meeting will be held at the Council House, Civic Centre on Wednesday 12 April 2010.

13. ANY OTHER BUSINESS

To discuss any business that, in the opinion of the Chair, should be brought forward for urgent consideration.

(a.) LOCAL ISSUES

(b.) INFORMATION AND NEWS

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www.defra.gov.uk

The Disability Discrimination Act 1995 and structures (gate, gaps & stiles) on rights of way

Good practice guidance for local authorities

Version 1 draft 3_1

June 2009

Status: draft only – no official status

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Guidance

Purpose

The purpose of this document is to offer good practice guidance to public authorities on the way in which disability discrimination legislation impacts on their functions in relation to gates, stiles and other such structures on public rights of way. It is intended to help authorities realise their obligations under this legislation.

Government is keen to encourage more outdoor physical activity and enjoyment of the countryside, because of the health and well-being benefits that this brings. Public rights of way are the primary means by which people access the countryside. But one of the key factors influencing the desire of people to use rights of way is how confident they can be that, in doing so, they will not encounter difficulties, including physical barriers. And for people with varying degrees of mobility the difficulties posed by gates and stiles can be a significant deterrent. If the Government's policy of encouraging access to the countryside is to be realised, removing or minimising such barriers will play a major part.

Background

Unlawful barriers, such as barbed wire across a path, can be tackled by authorities using the powers available to them. But dealing with barriers such as gates or stiles, which in many circumstances are lawfully erected on or across the route, requires more considered management.

A highway authority has a duty, under the Highways Act, to assert and protect the right of the public to use and enjoy a highway. The Disability Discrimination Act (DDA) adds a further dimension, by requiring (broadly) that in carrying out their functions, public authorities must 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, or to show that there are good reasons for not doing so.

There is no specific reference in the DDA to any aspect of rights of way management and, as yet, no body of case law that can be referred to in the application of the DDA to rights of way. Nonetheless, it is clear that authorities are required to have regard to their obligations under the DDA wherever changes or additions to the rights of way network are proposed and are encouraged to make improvements to structures wherever appropriate opportunities arise.

The scope for improving accessibility

Improvements that would make it easier for people with disabilities to use rights of way would also make it easier for other users of rights of way, for example: parents with young children in buggies. But these have to be balanced against the operational needs of landowners. Authorities will need to take account of the wider context, such as the accessibility of the route as a whole and also need to be aware that some rights of way are valued, by those who use them, because of their challenging nature or intrinsic character. Other local factors that may need to be taken into account, when considering potential improvements, include the historical or aesthetic character of the existing

structures and landscape features and local custom and practice. Authorities will need to take all these factors into account in deciding what structure is appropriate in each case.

There are three main reasons for the lawful existence of barriers, such as gates or stiles, on a public right of way.

- A right of way may have come into being with such structures already on it.
- An authority may make an order to create a new right of way, or divert an existing right of way, and agree to such structures in making the order.
- In the case of a footpath or bridleway, such structures may be authorised later, where there is a need to control animals for agricultural reasons.

In all three cases, there are opportunities for authorities to make improvements that benefit people with disabilities, and in doing so meet their DDA obligations.

Where there are existing rights of way with existing structures, it is open to the authority to make incremental improvements in accessibility by negotiating agreements with land owners and managers. This is arguably where there has been the most scope for change for the better and many local authorities, with the co-operation of land owners and managers, have made significant network improvements in this way, by the widespread replacement of, for example, stiles with gates or kissing gates.

Such agreements may be informal or statutory¹. With such existing structures, there is no obligation on land owners and managers to enter into agreements of this kind and so it will be up to authorities to build on any likely mutual benefits. Whilst, in terms of future enforceability, there are long term advantages in statutory agreements, authorities will need to balance these against the willingness of land owners and managers to enter into binding agreements, on the basis that an improvement that is not binding is better than no improvement.

Where an authority is considering an order to create a new right of way or divert an existing right of way, or considering authorising a structure on an existing right of way, it has an opportunity to influence the type and standard of structure agreed to as part of this process. An authority has powers to deal with gates or stiles which are not installed and maintained as agreed and it is therefore in the interests of the authority and the public to both negotiate the “least restrictive” option in terms of accessibility and to specify each structure as clearly as possible in the legal documentation. As part of this process, authorities should consider including conditions that require the removal or modification of a structure once the original purpose for its installation no longer applies.

Policies & standards

Government considers it good practice for authorities to develop, and work to, an approved policy on structures on rights of way: this may be part of their Rights of Way Improvement Plan or part of a wider policy on the DDA. This policy should include a standard for structures, incorporating the “least restrictive access” principle. The standard and its associated designs may be an external one, such as BS 5709, or it

¹ See paragraphs C13 and C14.

may be one that has been developed locally with suitable expert advice. Following the standard put in place when specifying to new structure, or improving an existing structure, will help the authority meet its obligations under the DDA. Authorities may consider incorporating such a policy into their Rights of Way Improvement Plan; this Plan should, in any case, include the authority's assessment of the accessibility of local rights of way to blind or partially sighted persons and others with mobility problems².

The initial investment, in producing a standard for structures on public rights of way, may well be offset by making it easier to specify structures included in subsequent orders and by making it easier to resolve disputes over what kind of structure was permitted in each location. The single word "gate" for instance can potentially encompass structures which are lawful or unlawful and therefore cannot be relied upon to provide a DDA-compliant structure.

The DDA imposes certain obligations on public authorities and authorities may be required to demonstrate compliance with the DDA if challenged. It is for each authority to specify in their policies, procedures and standards how compliance might be achieved locally. But having a policy on structures will make it easier for authorities to both comply and demonstrate compliance with the DDA.

Main Recommendations

As a matter of good practice, authorities should:

- 1) have a published policy on how it will meet the requirements of the DDA in relation to public rights of way – see Annex D;
- 2) ensure that any structures they give lawful authority to are clearly specified and documented – see Annex G;
- 3) consider including in any specification, provision to remove or vary the structure when the need for it changes or ceases – see Annex C;
- 4) consider displaying information on all lawful structures (including the accessibility) to enable someone with limited mobility to plan routes other than just those that are officially designated as "easy access" – see Annex J.

At the moment, disabled people cannot be sure that a walk they have chosen from a map will be free of such impediments. While able-bodied walkers merely grab their Ordnance Survey maps and boots and can expect to get along the paths, disabled people have to forgo this spontaneity as no OS maps or, in my experience, council leaflets show the position of barriers. We have to rely on the kindness of able-bodied supporters checking out the route beforehand, to avoid having to turn around and to ensure there is a way through to our planned destination.³

Rosie Norris – from "Farewell to Kissing Gates"

² The statutory guidance on Rights of Way Improvement Plans can be accessed through the following link - <http://defraweb/wildlife-countryside/pdf/access/prow/rowip.pdf>

³ Open Space magazine Summer 2008 vol 29 no2 p 2-4. Reproduced by permission of the Open Spaces Society

Annex A – Terms of reference

A.1 This guidance has been developed with the assistance of a subgroup of the Rights of Way Review Committee which was convened in order to address the implications of the Disability Discrimination Act 1995, as amended by the Disability Discrimination Act 2005, for structures on public rights of way.

A.2 It applies only within England.

A.3 It gives advice to public authorities on recording, authorising, managing and maintaining those gates, stiles and other such structures on public rights of way.

A.4 It is not statutory guidance as may be issued by the Secretary of State under section 69(2B) of the Countryside and Rights of Way Act 2000

A.5 The guidance sets out Defra's policy on structures on public rights of way and its view of the law. It does not take the place of the legislation, but seeks to give an overview of it within a policy context

A.6 The relevant Acts referenced in this guidance as follows.

- The 1949 Act means the National Parks and Access to the Countryside Act 1949
- The 1980 Act means the Highways Act 1980
- The 1981 Act means the Wildlife and Countryside Act 1981
- The 1990 Act means the Town and Country Planning Act 1990
- The 1995 Act means the Disability Discrimination Act 1995
- The 2000 Act means the Countryside and Rights of Way Act 2000
- The 2005 Act means the Disability Discrimination Act 2005
- DDA means the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005

Public Authorities with rights of way and other access functions

A.7 Surveying authority: Where there are two tiers of authority, the county council is the surveying authority. Unitary authorities are the surveying authorities for their areas. Surveying authorities are responsible for the definitive map and statement.

A.8 Highway authority: Where there are two tiers of authority, the county council is the local highway authority. Unitary authorities are the local highway authorities for their areas. Broadly, local highway authorities are responsible for the management and maintenance of the rights of way network. Public path orders may be made by district councils that are neither the surveying authority, nor local highway authority. A national park authority may take over the rights of way functions from highway authorities by agreement.

A.9 Access authority: For land within a national park this is the national park authority and elsewhere is the highway authority. The access authority is responsible for implementing the open access functions of the 2000 Act.

A.10 The Secretary of State for Environment, Food and Rural Affairs: The Government Minister responsible for all matters relating to public rights of way.

Annex B – The Disability Discrimination Act and its relevance to rights of way

B.1 The DDA comprises the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005. There are numerous references to “the public” or “persons” in rights of way legislation; these terms will encompass those members of the public with a disability and the DDA therefore applies to all public rights of way. Section 146(1) of the Highways Act 1980 for instance requires a landowner to maintain a gate or stile to a standard that prevents unreasonable interference with the rights of the persons using the way.

B.2 The 1995 Act specified that the legislation is applicable to those who are “providers of services”. Section 19(2)(b) states that a person is a provider of services if they are “concerned with the provision, in the United Kingdom, of services to the public or to a section of the public”. The 2005 Act introduced section 49 to the 1995 Act which states that every public authority shall have specified duties under the Act where a public authority includes any person certain of whose functions are functions of a public nature. Under the two stated sections all functions of rights of way departments must therefore consider that the provisions of the Act(s) apply to their service.

B.3 It is important to understand the full scope of the term “disability” in relation to the legislation. For the purposes of the 1995 Act the definition provided is that a person has a disability if he or she has a physical or mental impairment which has a substantial and long term adverse effect on his or her ability to carry out normal day-to-day activities. A disabled person is a person who has a disability or who has had a disability in the past. The government has provided further [explanation](#)⁴ of this definition.

The Social Model of Disability

B.4 Some local authorities have adopted the ‘*Social Model of Disability*’. This model is based on the principle that disabled people do not face disadvantage because of their disabilities, but experience discrimination because of the way we organise society. This includes failure to make public services accessible, failure to remove barriers of assumption, stereotype and prejudice, and failure to outlaw unfair treatment in our daily lives. The social model looks beyond a person’s disability to *all* the relevant factors that affect their ability to be a full and equal participant in society.

B.5 The traditional view of disability is called the ‘*Medical Model of Disability*’, because it sees people as having medical problems. As a result people with disability are expected to see their disability as their problem, something they will have to make the best of and accept that there are many things they cannot do.

B.6 The social model of disability starts from a different perspective. Instead of focussing on a person’s disability, it presupposes that everyone is equal and that society erects barriers that prevent disabled people participating and restrict their opportunities. In terms of access to rights of way, instead of asking: “*How do people’s disabilities or health problems prevent them from using rights of way?*”, the social

⁴ Equality and Human Rights Commission website : “What is the definition of disability” page January 2009

model of disability would ask: “*What is it about public rights of way that makes it difficult for people with disabilities to use them?*”.

B.7 For the purposes of this guidance it is important that anybody involved with the potential implementation or maintenance of structures on rights of way does not restrict their DDA considerations purely to, for instance, the effect on people in wheelchairs. A non-exhaustive list would also encompass ensuring that the needs of those with problems of mobility, manual dexterity or physical coordination are considered and catered for. Within this context, gates that require excessive force to open, or have latches that are difficult to operate would fall within the ambit of the DDA.

B.8 The DDA goes further than just requiring that a public authority does not discriminate against disabled persons. Section 49A requires positive steps to be taken to:

- eliminate discrimination that is unlawful under the Act;
- eliminate harassment;
- promote equality of opportunity between disabled persons and other persons (this may mean treating disabled persons more favourably)
- promote positive attitudes towards disabled persons
- encourage participation by disabled persons in public life

B.9 The discrimination provisions are subject to certain exceptions, which contain an element of proportionality and reasonableness. With regard to cost, the Act says costs could be a factor in justifying non-compliance where “*treating the disabled person equally favourably would in the particular case involve substantial extra costs and, having regard to resources, the extra costs in that particular case would be too great*”.

B.10 There are further exemptions involving the protection of the rights and freedoms of others and ensuring that any requirements are a proportionate means of achieving a legitimate aim. The Disability Rights Commission has produced a [Code of Practice](#)⁵ that describes the working of the DDA in greater detail (section 11 of the code relates to the matters discussed in this paragraph).

B.11 All of this applies only to functions within the authority’s powers and will not apply where a public authority is exercising a statutory power and has no discretion as to whether or how to exercise that power, or no discretion as to how to perform its duties, for example: adding an existing right of way with its existing limitations to the definitive map and statement.

Which individuals and bodies does the DDA apply to?

B.12 The DDA applies to a highway authority’s provision of public rights of way services.

⁵ Disability Discrimination Act 1995 Code of Practice. Rights of access: services to the public, public authority functions, private clubs and premises : Disability Rights Commission 2006

B.13 Guidance provided in 1997 by the Disability Unit of the Department of Social Security⁶ indicates that the owner of land over which a right of way runs is not regarded as a provider of services. Exclusion from the provisions of the DDA might not be extended to a landholder who is providing permitted access to their land. If the landholder is in receipt of payment for the permitted access it is less likely that they will be excluded from the DDA provisions.

Which areas of rights of way work does the DDA apply to?

B.14 The DDA will have an impact in a number of areas of rights of way work:

- the presence and character of structures such as gates and stiles on the ways
- the condition and character of the rights of way network
- production and implementation of a Rights of Way Improvement Plan

B.15 The first area is the subject of this guidance. The second is not addressed in detail in this guidance but as an illustration, making an order proposing to divert a section of tarmac path onto a new section of poorly drained, unsurfaced land would be likely to contravene the DDA due to the reduction in accessibility. The production of a Rights of Way Improvement Plan specifically required local authorities to engage with representatives of groups of users with mobility problems to determine their requirements, and the issue of structures on rights of way should have been addressed in drawing up the document.

B.16 More than most of the other legislation affecting rights of way, the DDA requires an authority to interpret the requirements when deciding how it applies to the provision of the service. While guidance and case law will provide information on which individual authorities can base their decisions, each case is a matter of judgement and authorities should bear in mind that they may be called upon to demonstrate that they have considered the DDA requirements involved in each judgement that they have made.

Guidance and reference documentation

B.17 Several documents have been published which clarify what is necessary to meet the requirements of the legislation and inform practitioners and interested parties of good practice in relation to structures on a right of way. These are

- The Rights of Way Improvement Plan adopted by the local authority. This document should have been informed during its development by the "Rights of Way Improvement Plans Statutory Guidance to Local Highway Authorities in England" [*published*](#)⁷ by Defra in 2002.

⁶ Guidance Note : The Disability Discrimination Act 1995 : Access to the countryside : Disability Unit (Department of Social Security) 1997

⁷ Rights of Way Improvement Plans. Statutory Guidance to Local Highway Authorities in England : Defra November 2002

- “By all reasonable means: inclusive access to the outdoors for disabled people” published by the Countryside Agency in 2005. Now [available](#)⁸ from Natural England’s website
- “BT/Countryside for All Good Practice Guide” extended CD edition published by the Fieldfare Trust in 2005. An [overview](#)⁹ is available from the Fieldfare Trust’s website.
- BS 5709:2006 “The British Standard for Gaps, Gates and Stiles” 3rd edition published by the British Standards Institute 2006 (latest) ISBN 0 580 48107 7. [Guidance](#)¹⁰ is available from the Pittecroft Trust on the application of the standard.

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⁸ By all reasonable means: inclusive access to the outdoors for disabled people : Countryside Agency 2005

⁹ Fieldfare Trust Website : “Countryside for all” page January 2009

¹⁰ Understanding the British Standard for Gaps Gates and Stiles BS5709:2006 explained : The Pittecroft Trust 2007

Annex C – Disability discrimination legislation and its application to rights of way

New rights of way

C.1 The point in time at which a new section of right of way is being planned, i.e. the drawing up of an agreement or a creation order or a diversion order, is the time at which any structures which are to become limitations must be specified. The authority's duties under the DDA are exercisable at this point. Negotiation between the parties should ensure that any order or agreement that goes forward contains the minimum number of structures that can legally be justified, each of which is the least restrictive under the individual requirements.

The recording of 'limitations'¹¹ in public path diversion orders

C.2 Where a diversion is being proposed, an authority will be in a strong negotiating position in relation to limitations. Firstly, it is under no legal obligation to exercise its power to make an order. Secondly, it may contend that an order that is not DDA compliant would not meet the confirmation requirements – that the diverted path is not substantially less convenient to the public and regard should be given to public enjoyment of the path or way as a whole – where “the public” will include those with a disability.

The recording of limitations in public path creation orders

C.3 A public path creation order will be laid out by the authority and that authority must satisfy itself that their actions are DDA compliant.

The recording of limitations in public path agreements

C.4 An authority may find itself in a delicate negotiating position when presented with an offer of a new right of way, or the addition of rights to an existing way, if the associated limitations that are required present greater barriers than would normally be acceptable. While there will be a case for accepting the best public path agreement offer that can be obtained, the DDA still applies under these circumstances and its effects should be considered against the advantages of the proposed scheme. An authority should be wary of entering into an agreement where public funding is being used to compensate the landholder and there are limitations proposed that do not meet the least restrictive access principle.

Existing rights of way with existing structures

C.5 Where there are existing rights of way with existing structures, it is open to the authority to make incremental improvements in accessibility by negotiating agreements with land owners and managers. Many local authorities, with the co-operation of land owners and managers, have made significant network improvements in this way, by the

¹¹ For more information on 'limitations' see Annex E

widespread replacement of, for example, stiles with gates or kissing gates. Such agreements may be informal or statutory – see s C13 and C.14.

The recording of structures authorised under section 147 of the 1980 Act

C.6 When a highway authority has received a valid application for the installation of a structure that otherwise meets the requirements of section 147 of the 1980 Act, the valid agricultural requirement to control animals must be balanced against the obligation of the authority to comply with the DDA. The assessment process should seek to define a suitable structure to satisfy both requirements.

C.7 Section 147(2A) of the 1980 Act requires an authority, in authorising a structure, to have particular regard to the needs of people with mobility problems.

Provision for the removal of structures when the original justification no longer applies

C.8 Paragraphs C.9 and C.10 apply in equal measure to a structure to be recorded as a limitation in a proposed public path creation order, diversion order or creation agreement and a proposed structure to be authorised under s147 of the 1980 Act (collectively a “proposed structure”).

C.9 Whilst the law provides for new structures to be introduced to the rights of way network under appropriate circumstances, an authority has no powers to remove a well-maintained, lawful structure unless specific provision is made within a public path order, agreement or s147 authorisation. There is therefore an inbuilt tendency within the system to increase the number of structures. In order to counter this tendency, authorities should consider making use of powers to include a stipulation within a public path order, agreement or s147 authorisation which would allow a structure to be removed, or altered to reduce its impact on users of the way, at a point in the future when it no longer fulfils the original valid need.

C.10 Suitable stipulations may be set out in an order, agreement or authorisation providing that when the grounds for requiring a structure originally stated by the applicant (or successor) no longer apply, the structure is no longer lawful and it then represents an obstruction that can be dealt with under section 143 of the 1980 Act. Should the landholder’s requirements change so markedly that the original terms of an order, agreement or authorisation no longer apply, there is no impediment to the submission of a further application for a different type of structure. Where a lawful structure bridges a boundary between the holdings of two landholders it will be necessary to take additional care over such stipulations as an applicant may have just as great an interest in controlling the ingress of, for instance, a neighbour’s stock as in controlling the egress of his own.

C.11 While each case will be judged on its individual merits, it will be helpful for an authority to have set out in its policy document (Annex D), the general considerations it will make in relation to the removal of a redundant structure. Careful thought will need to be given to what is a reasonable period after which the condition, requiring the removal of a structure, is engaged. Factors such as the local agricultural practices or safety considerations will clearly carry weight.

C.12 Irrespective of DDA considerations, the specification of a gate as a lawful structure, rather than a stile, offers more flexibility to all parties, as it can be either locked back or taken off its hinges when justifications change, thus replacing a gate with a gap very quickly as the need arises (or vice versa).

Other rights of way legislation specifically referring to the needs of people with disabilities

C.13 There is provision within section 147ZA of the 1980 Act for an existing lawful structure to be improved to permit those with mobility problems to be able to pass it without undue difficulty. An authority may enter into an agreement with a landowner, lessee or occupier of the land (but must obtain the consent of all of those affected parties who are not party to the agreement) to enable that authority to replace or improve an existing structure so that it can be used more easily by those with mobility problems. Subsections (3) and (4) provide for enduring conditions to be included in the agreement to ensure ongoing maintenance and accessibility for the public and these should be used where required to minimise the impact of the structure on the users of the way.

C.14 A lawful limitation (recorded on unrecorded) or a structure authorisation made under section 147 of the 1980 Act is permanently superseded by the details of the replacement structure specified in an agreement made under section 147ZA of the 1980 Act from the effective date (subsections 5(c) and 5(b) respectively). The effective date is either a date specified in the agreement or the first anniversary of that agreement. Section 53 of the 1981 Act therefore requires that the definitive statement should be revised by means of a legal event modification order to record the updated details of a limitation superseded under a section 147ZA Highways Act 1980 agreement.

The concept of “overall” benefit of a proposed scheme

C.15 The earlier paragraphs of this annex have focused on how the DDA applies to an individual structure in isolation. A situation that may arise from time to time is where there appears to be an overall benefit to a scheme but with an isolated drawback (for instance the diversion of a way to an alignment that requires fewer structures upon it but has a single unavoidable limitation that will cause some problems to one group of people with limited mobility). The legislation on its own is not always going to assist an authority in deciding where its duties lie. Looking at the effect of the new limitation in the example would lead to the conclusion that the requirements of section 21 of the DDA are not being met in that it may make it impossible for a person to make use of the service because of the limitation, whereas the rerouting of the way to an alignment that reduces the number of structures may make the route more accessible to other people with different problems, thus meeting the promotion of equality requirements of section 49A of the DDA. In coming to a conclusion under these difficult circumstances the authority will need to be able to show that it has made all reasonable efforts to understand where the balance of benefit lies and that the scheme pursued (if it is decided to proceed) contains the maximum benefits available (i.e. that options that avoided the defined limitations were assessed).

Annex D – Authorities’ policies on structures on rights of way

Policy

D.1 Government considers that it would be good practice for each highway authority, if it has not already done so, to develop and publish a policy on how it deals with structures on rights of way. Whether this is a document in its own right, part of an authority’s wider DDA or access policy or is addressed within a Rights of Way Improvement Plan is not as important as the fact that the policy exists. This guidance makes a small number of further recommendations but they are at the level of a principle and do not go into the detail of the local implementation – this is what will be specified in the policy. A non-exhaustive list of factors that might be considered for inclusion in a policy is:

- the standards for the design of proposed structures (paragraphs D.3 to D.10)
- dealing with existing structures that appear to be unlawful
- removal of existing structures
- repair and replacement of existing structures
- conditions for the authorisation of structures
- the authority’s approach to historical structures, those of characteristic local design or structures affected by landscape considerations
- dealing with proposed diversions and the structures that a landholder wishes to install on the created section of the way.
- dealing with proposed path creation agreements and the structures that a landholder wishes to install on the created section of the way.

D.2 The standards for the design of proposed structures will be a major part of showing compliance with the DDA and these are considered in more detail below.

BS 5709

D.3 The British Standards Institute have developed “BS 5709 - The British Standard for Gaps, Gates and Stiles” to provide guidance to practitioners in specifying rights of way structures that can be conveniently and safely used by the public. In isolation “BS” standards have no explicit statutory force. They can acquire statutory force by means of being referenced in primary legislation. But this is not the case with either the DDA or any rights of way legislation. It has however attained a high degree of credibility and the public are likely to be reassured by the fact that a structure complies with a “BS” standard. Some of its eight key rules have been endorsed in other publications – particularly rule one which calls for the least restrictive option when selecting a structure to be approved. The options, each of which has their functional requirements laid out in BS 5709, are in increasing scale of restriction:

- Gap
- Gate
- Kissing Gate (not applicable to bridleways)
- Stile (not applicable to bridleways)

It is difficult to envisage a locally produced standard that will materially vary from this rule while ensuring that an authority adheres to the requirements of the Disability Discrimination legislation.

D.4 Some misunderstandings have arisen regarding the degree of constraint imposed by the BS 5709. It does not merely provide identikit designs of stiles and gates, but puts forward an approach and the performance requirements required of any structure which is to meet the standard. Illustrations of some conforming structures are presented in the standard as examples.

D.5 There are a number of suppliers who design and manufacture structures that can conform to BS 5709 if appropriately installed. It must be emphasised that simply buying a “BS 5709 compliant” structure does not meet the standard. Assessment of the specific requirement must be made in the first instance and the most appropriate form of structure then selected.

D.6 At that point, if it has been found necessary to implement a structure, the best value model can be selected from a supplier. As an illustration, installing a “BS 5709” gate where a gap is appropriate would not meet the standard. It should also be borne in mind that a BS 5709 specification for a structure covers more than just the physical entity, as it will define additional factors such as ground conditions and manoeuvring space requirements.

Local standards

D.7 As there is no legislation applicable to rights of way that prescribes the standards for structures, it is open to an authority to develop their own local standard. This would necessitate the enrolment of persons with a good knowledge of engineering, the requirements of the legislation and the needs of people with disabilities. In addition, it is likely to require public consultation on any proposals that are brought forward.

D.8 There are authorities that have developed their own standards, or have based their standards on BS 5709 with specified variations that have been found necessary because of local requirements. It is recommended that where authorities are contemplating moving away from BS 5709 they should be clear about their reasons for doing so and their ability to demonstrate compliance with the DDA if challenged.

D.9 It is also recommended that those elements of the local standard that describe matters other than the physical structure are clearly specified. This requirement would include matters such as the state of the ground in the vicinity of the structure and the position of the structure in relation to other features (setting a bridle gate back from the roadside, for instance, to allow manoeuvring space).

Annex E – More on structures and limitations

E.1 This guidance is concerned with structures on rights of way that interfere with the unrestricted public right of passage. Structures that are commonly encountered are stiles and gates but will include gaps if the public is restricted in the use of what is otherwise defined, in the definitive map and statement, as the full width of the way (or the width commonly used where there is no statement).

E.2 Any restriction imposed by a structure on the free exercise of public rights of the lawful user classes on any right of way is an offence under section 137 of the 1980 Act and also a common law nuisance unless :

- it meets the specification of a limitation insofar as it is recorded on the definitive map and statement under section 53 of the 1981 Act or
- it meets the specification and stipulations¹² of an authorisation made under section 147 of the 1980 Act or
- it has been installed by an authority using their powers under section 66 or 115B of the 1980 Act or has been installed as the result of the making of a gating order or a traffic regulation order or
- it can be shown to have existed at the time that the way was dedicated (i.e. it represents an unrecorded limitation).

E.3 A structure recorded either as a limitation or as an authorised structure is referred to as “*lawful*” in this guidance.

E.4 In the past, due to genuine misunderstandings or faulty records of existing lawful structures, highway authorities have occasionally supplied gate or stile kits for landowners or user groups to install at locations for which there was no lawful authority for such a structure. The act of donating or contributing to the installation of a structure confers no legality to that structure.

Limitations

E.5 When the definitive maps and statements for England were first drawn up under the National Parks and Access to the Countryside Act 1949, the Act required authorities to record not only the route and, in some cases, the width of each right of way, but also the rights that existed along it. In addition, the Act required authorities to record: “*any limitations and conditions affecting the public right of way thereover, as in the opinion of the authority it is expedient to record*”. It is the limitations and conditions that this guidance is concerned with.

E.6 A limitation, in the context of rights of way, can be defined as anything (save for the authorised structures described in paragraphs E.17 to E.25 and Annex F) which would represent an illegal interference with the public’s entitlement to full enjoyment of the specified rights associated with the way, were it not for the fact that the way had originally been created or dedicated subject to the limitation. The limitation may be the

¹² The legislation actually uses the term “conditions” however the term “stipulations” is substituted in this guidance to minimise confusion with use of the separate term “condition” used in the National Parks and Access to the Countryside Act 1949 as referred to in paragraphs E5 and E6.

result of a natural feature or it may be a physical feature installed by the landowner, such as a gate or stile. What was meant in the 1949 Act by a condition has never been satisfactorily settled.

E.7 What is defined and accepted as a limitation when the way is created is then fixed unless, as case law confirms¹³, the right of way is effectively rededicated without the limitation or an agreement is made between the landholder and the highway authority to make a structure recorded as a limitation more convenient for the public to use (see paragraphs C.13 and C.14).

Limitations on rights of way that come into being through a public path diversion order or path creation agreement

E.8 Public rights of way that have been dedicated by a landowner as part of a public path creation agreement (section 25 of the 1980 Act) or a section of a way that has been created by means of a diversion order (section 119 of the 1980 Act) may come into being with specified limitations on them. There is no constraint on the scope of, or reasons for, a limitation proposed by a landowner, although the overall effect on the public of all of the proposed limitations must be taken into account by an order making authority when deciding whether or not to make an order or enter into an agreement.

Limitations on rights of way that come into being through a public path creation order

E.9 Public rights of way that come into being through a creation order (section 26 of the 1980 Act) are not created by the landowner, indeed by their nature they may well come into being against the landowner's wishes, but may nevertheless be created with limitations specified by the order making authority.

Limitations on rights of way that come into being through presumed dedication or on the basis of historical evidence

E.10 A public right of way may have come into being through presumed dedication rather than by means of a public path order or a public path creation agreement. In most cases the qualifying period of use will cover the statutory elapsed 20 years. Under this circumstance the way will have been used, since the start of the period, with any limitations in place, and therefore those limitations must be recorded on the definitive map and statement. In the case where a right of way has been proved to have come into being by means of evidence provided by historical documentation, then that documentation may also show that there had always been a limitation at a particular point on a way. In either case there is no freedom to negotiate over the scope of any limitation as the rights will have come into being with those limitations in place.

Structures that may be recorded as limitations

E.11 In principle any structure may be recorded as a limitation on a right of way if it is proved to be present at the time that the right of way is dedicated. By this mechanism a gate can be a lawful limitation on a restricted byway (RB) or byway open to all traffic

¹³ Gloucestershire County Council v Farrow [1985] 1WLR 741

(BOAT). In the case of a RB only, a gate can also be recorded as a limitation as the result of a diversion order, creation order or creation agreement made, respectively, under s119, s26 or s25 of the 1980 Act. Lawful gates may therefore be encountered on restricted byways and byways open to all traffic. Diversion orders made under s116 of the 1980 Act cannot however give rise to gates on restricted byways and byways open to all traffic. Structures that are clearly incompatible with lawful use of the highway, such as a stile on a bridleway, indicate that further investigations into either the status of the way or the legitimacy of the structure are required.

Maintenance of structures recorded as limitations

E.12 Section 146 of the 1980 Act imposes on a landowner the duty to maintain a lawful limitation consisting of a gate, stile or other structure across a footpath, bridleway or restricted byway in a safe condition and to a standard that prevents unreasonable interference with the rights of someone using the way. If a landowner fails to maintain a structure recorded as a limitation to the required standard then the structure automatically becomes an obstruction and can be dealt with under section 143 of the 1980 Act. Where a highway authority fails to carry out its duties in dealing with an obstruction, the public are entitled to serve notice on the authority under the process defined in sections 130A-130D of the 1980 Act.

Recording of limitations

E.13 Because a limitation would otherwise be regarded as an obstruction on a public right of way, it is important that these details are accurately recorded on the definitive map and statement. This duty is imposed on surveying authorities by section 53(2)(b) of the 1981 Act. Where a new creation agreement, creation order or diversion order is being brought forward it should therefore clearly specify all proposed limitations for inclusion in the definitive statement should the order be confirmed or agreement completed.

Publicising records of limitations

E.14 Members of the public have a statutory right to view the definitive map and statement, details of which include the recorded limitations.

Is a bridge a limitation?

E.15 By the definition laid out in paragraph E.6, a structure which permits full use of the defined highway is not a limitation. Section 328(2) of the 1980 Act makes clear that if a highway passes over a bridge or through a tunnel then the bridge or tunnel is part of the highway. An order or creation agreement should define the route as intended, and therefore all bridges should be fully specified in the public path order or agreement describing the way. Where a bridge results in a reduction in the width of the width of way such that it warrants recording on definitive statement, this should be expressed as a change in the width of the highway rather than a limitation.

Authorised structures

E.16 In addition to limitations, landholder may lawfully install structures on certain types of highway by means of a specific authorisation under section 147 of the 1980 Act, application for which may only be made on restricted grounds.

E.17 Section 147 of the 1980 Act permits an authority to authorise the erection of stiles, gates or other works on a footpath or bridleway to prevent the ingress or egress of animals so that agricultural activities, including forestry and the keeping of horses, can be carried out efficiently. The authority, in granting authorisation, may make that authorisation subject to stipulations. In doing so it will specify the manner in which the structure shall be erected and maintained, such that if the stipulations are not met the structure is deemed to be an obstruction and is subject to the powers of removal under section 143 or section 333 of the 1980 Act.

E.18 There is no scope under section 147 of the 1980 Act to authorise a landholder to install any structures on a restricted byway (RB) or a byway open to all traffic (BOAT) (paragraph F.3 separately references an authority's right to install a cattle grid in a highway).

E.19 The authorisation process for a structure requires the completion of several stages:

- The landowner, lessee or occupier (landholder) of the land affected must apply in writing to the highway authority (many authorities maintain standard application forms)
- The authority should make reasonable efforts to satisfy themselves of the landholder's status
- The authority must satisfy themselves that the land is either already in use or being brought into use for agriculture (including forestry or the breeding or keeping of horses)
- The authority must satisfy themselves that the structures are for the purpose of preventing the ingress or egress of animals
- The authority may consider alternative means of controlling the animals that do not involve placing structures across the right of way, such as the erection of fencing alongside the path to leave a clear corridor along the line of the route. There is a balance to be struck between placing a burden on the landholder and imposing inconvenience on the public using the right of way. An example that might need careful consideration is where a field is being divided into a number of horse paddocks, the boundary of each of which crosses a right of way.
- The authority must consider the stipulations that they wish to impose under section 147(2) of the 1980 Act for maintenance and for enabling the right of way to be used without undue inconvenience. This is the point at which the authority's duties under the DDA are exercisable. The provision of section 147(2A) to have regard to the needs of persons with mobility problems must be adhered to and therefore suitable designs of structure should be specified (see paragraph G.4).
- The landholder must sign agreement to the terms

Subsequently

- Installation of the structure must be to the standards and stipulations specified. Following the satisfactory installation of a structure the landholder is entitled to a 25% minimum contribution from the highway authority towards any maintenance costs of the structure that are subsequently incurred, subject to any conditions in the authorisation.

E.20 The authorisation of a structure under section 147 of the 1980 Act by a highway authority is a discretionary power, however authorisation should not be unreasonably¹⁴ withheld where a clear and legitimate need has been demonstrated.

Removal of redundant authorised structures

E.21 Section 147 of the 1980 Act makes no specific provision for the removal of an authorised structure once the original justification is no longer valid. It does however make provision for the authorisation to be conditional and authorities may consider an authorisation that permits them to require the removal, or reduction in effect on a user, of a structure once the need for it has passed or changed.

Maintenance of authorised structures

E.22 Section 146 of the 1980 Act imposes on a landowner the duty to maintain an authorised gate, stile or other structure across a footpath, bridleway or restricted byway in a safe condition and to a standard that prevents unreasonable interference with the rights of someone using the way. If a landowner fails to maintain an authorised structure to the required standard then that authorisation lapses and the structure automatically becomes an obstruction and can be dealt with under section 143 of the 1980 Act. Where a highway authority fails to carry out its duties in dealing with an obstruction, the public are entitled to serve notice on the authority under the process defined in sections 130A-130D of the 1980 Act.

Records of authorised structures

E.23 Copies of the application, supporting information and authorisation, including the specification and stipulations applying to any lawful structure, should be retained by the highway authority.

Publicising records of authorised structures

E.24 At present there is no specific right to view records of currently authorised structures, although section 320 of the Highways Act 1980 requires any authorisation to be in writing and any such document can potentially be the subject of a Freedom of Information (FOI) or Environmental Information (EIR) request.

¹⁴ Where the definition of “unreasonable” follows the Wednesbury principles

Annex F – Other legislation permitting the authorisation of structures

F.1 Diversion of a public right of way can be achieved by confirmation and, where required, certification of orders made under section 257 of the 1990 Act. Unlike equivalent diversions made under the 1980 Act there is no specific reference in the Act to any limitations and they cannot therefore be recorded under this legislation. Following the confirmation of a diversion order made under the 1990 Act a highway may consider the implementation of structures on the new section of the way under the powers described below in paragraphs F.2 and F.3. Where appropriate, a landholder may also apply for the authorisation of a structure under the provisions of section 147 of the 1980 Act, following the diversion of a right of way under the 1990 Act.

F.2 Sections 66(2) and 66(3) of the 1980 Act permit a local authority to provide and maintain in a footpath, bridleway, restricted byway or byway open to all traffic any barriers, posts, rails or fences as is necessary to safeguard anybody using the highway. In many cases this provision is exercised to place barriers alongside the way to stop users endangering themselves. As an example, barriers which stop children running out into a vehicular highway at the end of a footpath are often provided. The authority may also remove any barrier erected under this provision. An authority should be aware that in installing a barrier under the provisions of section 66 of the 1980 Act, while benefiting one group of the wider public, they may also be adversely affecting another group in the exercise of their lawful rights. The rights of all legitimate users should be balanced when considering the implementation of a structure under the particular circumstances encountered in each case.

F.3 Section 82 of the 1980 Act permits an authority to install a cattle grid in a public vehicular highway. The installation may follow representations made by landholders that a grid is necessary to control the passage of animals. It will be necessary to provide a means by which animals under control can bypass the cattle grid.

F.4 Section 115B of the 1980 Act permits an authority to place structures on a highway for, amongst other reasons, providing a service for the benefit of the public. If at some point in time the structure no longer fulfils the requirement for which it was installed, then the authority will be under a duty to remove it in order that it does not, by definition, become an obstruction.

F.5 The Road Traffic Regulation Act 1984 permits a traffic authority to manage and control traffic on any highway, including all of the individual categories of right of way, on either a permanent or temporary basis, by means of a traffic regulation order. The scope for traffic regulation encompasses complete closure, governing the types of user permitted, the hours of use and the direction of permitted travel. In many cases the control will be exerted by the installation of structures at either end of the affected section of highway. But unlike the other measures covered by this guidance, orders made under this legislation do not authorise the structures themselves, but instead remove the right of access. Although the principles of the DDA will still apply to a local authority where a traffic regulation order is being sought this particular circumstance will not be explored further in this guidance.

F.6 Sections 129A to 129G of the Highways Act 1980 provide for the making of gating orders. A gating order permits a highway authority to restrict access to most types of highway, including all classifications of rights of way, for the purpose of reducing crime. The order is effected by the installation of a lockable gated barrier at either end of the specified length of highway and may be for all times of the day or for specified periods. In most cases the effect is to close of a right of way to the public, although the public rights themselves are not extinguished. In principle public use of the way may later be enjoyed if it is decided at one of the periodic reviews of the gating order that the restrictions are no longer required due to a reduction in criminality. Although the principles of the DDA will still apply to a local authority where a gating order is being sought or renewed this particular circumstance will not be explored further here.

DRAFT - this document has no official status

Annex G - Specifying structures

G.1 Because of the need to comply with their duties under the DDA, it will be in the interests of authorities to clearly specify any lawful structures on rights of way that they agree to. A specification of a “gate” in a public path order or an authorisation, which might previously have been satisfactory, defines the structure insufficiently to be able to show the authority’s compliance with the DDA and may hamper the authority in the exercise of its enforcement duties.

G.2 Detailed specification of a structure in the legal records will simplify the task of ensuring that DDA compliant structures are installed and later maintained to the required standard. In addition, while a more detailed structure specification than has previously been used requires a degree of additional work at the stage where an order or an agreement is being drawn up (albeit just a reference to a published standard in the majority of cases), that level of detail will place a highway authority in a much stronger position should any general maintenance or enforcement issues arise later on.

Number of structures

G.3 The number of structures on a route should be kept to the minimum that are necessary. There should be a clear and justifiable reason for each structure.

Type of structure

G.4 The type of structure should be the least restrictive that is consistent with the landholder’s requirement. The authority may consider defining a specification which is variable according to the changes in land use. It might, for instance, indicate a gate while a field crossed by a path is used for grazing animals, but a gap if the land is subsequently converted to arable use; careful consideration would need to be given to what is a reasonable period of time over which a change of use should trigger a change to a structure.

Standard and design

G.5 The standard and design of each lawful structure should ensure that the DDA obligations are met and it should be documented to such an extent that if there is a disagreement over the standard of the installed structure, or subsequent maintenance issues, the documentation will conclusively show what is lawful. The standard which is being met should be recorded and this will need to specify the version of the standard which is operative at the time because there is no implicit obligation on a landowner to upgrade lawful structures if or when a new version of a standard is released. For instance if BS 5709 is to be specified then the version should be documented, e.g. BS 5709:2006, and a gate built to that standard will always meet that requirement, whereas a gate built to BS 5709 (implicitly the current version) may not meet a future version of the standard. Similarly, if an authority has drawn up its own specifications and standards the version number should be stated in the documentation e.g. Xshire rights of way structures specification version 3.

G.6 It is not only physical dimensions of a structure that are of relevance when defining a standard for structures. The means of latching, the reasonable force required

to open a gate and the manoeuvring space available are all matters that will have a major bearing on the ease of use of the structure.

G.7 In principle there is no reason that some form of rolling standard (“a bridle gate to the latest version of BS 5709”) cannot explicitly be written into an authorisation or limitation. It is not recommended that this approach is followed however, as it runs the risk of imposing an unquantifiable future liability on landholders and is at risk of making every structure installed to this specification an obstruction overnight if a new version of the standard is published.

Model description of a limitation on a public path order or agreement

G.8 The order or agreement should describe all of the limitations that will be encountered on the proposed new section of way. This will include, for instance, existing structures on the land that are to be retained, such as gates. For reasons of legal clarity it is recommended that if there are to be no limitations then the order or agreement should record this.

G.9 For reasons of transparency and scrutiny it is considered good practice to define the detail of any limitation in an order (or to cross reference a design document) containing the following;

- Style of structure e.g. gate
- Standard (and version) e.g. BS 5709:2006 or Xshire rights of way structures specification version 3
- Any variances from the standard (the reasons for this are likely to need to be documented)
- Design e.g. Fig 3
- Position e.g. grid reference X,Y
- Variation or stipulations which might require removal e.g. gate permitted if land is being used for grazing, gap to Xshire rights of way structures specification version 3 Fig 1 at the same position otherwise.
- It is assumed that overall design details of the limitation, such as provision for manoeuvring space, ground condition or fencing adjacent to the actual structure, are included in the standard used by the authority. If this is not the case then these details should be included.

It should be borne in mind that a limitation included in a confirmed order is not capable of being revised (subject to rededication referenced in paragraph E.7 or the completion of an accessibility agreement made under section 147ZA of the 1980 Act).

Model description of an authorised structure

G.10 The form of authorisation for a structure under section 147 of the 1980 Act is not defined and is open to local preference. Nevertheless, it is recommended that the specification section of the document should follow the principle set out in paragraph G.9 (or to cross reference a design document) containing the following;

- Style of structure e.g. bridle gate

- Standard (and version) e.g. BS 5709:2006 or Xshire rights of way structures specification version 3.
- Any variances from the standard (the reasons for this are likely to need to be documented)
- Design e.g. Fig 3
- Position e.g. grid reference X,Y
- Variation or stipulations which might require removal e.g. gate permitted if land is being used for grazing, gap to Xshire rights of way structures specification version 3 Fig 1 at the same position otherwise.
- It is assumed that overall design details of the limitation, such as provision for manoeuvring space, ground condition or fencing adjacent to the actual structure, are included in the standard used by the authority. If this is not the case then these details should be included.

A highway authority may wish to consider putting a provision in the stipulations section of an authorisation that would permit the rescinding of the authorisation on any reasonable grounds.

Model description of a structure which is the subject of an improved accessibility agreement

G.11 In drawing up an agreement between a landholder and a highway authority to specify the replacement or improvement of a structure under section 147ZA of the 1980 Act it is recommended that the structure is defined to the same level of detail as required for a limitation or a section 147 Highways Act 1980 authorised structure. In principle maintenance and enforcement issues should be more straightforward than for other lawful structures because the highway authority itself will take over many of the maintenance responsibilities, however a full specification will nevertheless make clear to all concerned what is required.

- Style of structure e.g. bridle gate
- Standard (and version) e.g. BS 5709:2006 or Xshire rights of way structures specification version 3.
- Any variances from the standard (the reasons for this are likely to need to be documented)
- Design e.g. Fig 3
- Position e.g. grid reference X,Y
- Variation or stipulations which might require removal e.g. gate permitted if land is being used for grazing, gap to Xshire rights of way structures specification version 3 Fig 1 at the same position otherwise.
- It is assumed that overall design details of the limitation, such as provision for manoeuvring space, ground condition or fencing adjacent to the actual structure, are included in the standard used by the authority. If this is not the case then these details should be included.
- Particulars of the agreed maintenance responsibilities.

A highway authority may wish to consider putting a provision in the constraints section of an agreement that would permit it to remove a structure on any reasonable grounds.

Annex H - Open and permissive Access

H.1 Structures such as gaps, gates and stiles are also to be found providing access to land designated as access land under the Countryside and Rights of Way Act 2000. In most cases the local highway authority acts as the access authority, the body responsible for managing the implementation of the access right, unless the land affected lies within a national park, in which case the national park authority acts as the access authority. As part of their duties the access authority will have identified any improvements necessary to permit the public to reach and enjoy the access land. An Access Management Grant Scheme was set up to provide funding to authorities and land managers to facilitate public access. The [guidance](#)¹⁵ makes it clear (stage 3 – consultation and stage 4 – identifying visitor management measures required and associated costs) that the needs of people with disabilities are to be considered and accommodated where it is reasonable to do so under the terms of the DDA.

H.2 Sections 34 to 39 of the 2000 Act permit an access authority to provide linear access to access land, either by agreement or imposition where necessary and also permit the improvement or creation of points of access to the land by agreement or imposition although, in deciding where that access should be provided, they must have regard to the requirements of efficient land management. This function also applies to maintenance of any structures. The access will be by means of [gaps, gates or stiles](#)¹⁶. As described in annex G, the specification of any structure will need to be clearly defined and, where necessary, available to the public in order to show that the authority's DDA obligations have been discharged.

H.3 As a matter of good practice, authorities should aim to apply the principles set out in this guidance to permissive footpaths and bridleways, particularly if public funding is used to encourage landowners to provide such ways.

¹⁵ Access Management Grant Scheme – Information and how to apply CA 177: Countryside Agency March 2005

¹⁶ Part 1 of the Countryside and Rights of Way Act 2000. Guidance on means of access (gates, stiles, etc) to and within access land : Defra

Annex I - Should structures be recorded as limitations or authorisations?

I.1 A matter of some controversy is whether, in making a diversion order, creation order or creation agreement, it is better to record structures on the new section of the way as limitations within the order or to leave all references out and to authorise any structures under subsequent section 147 Highways Act 1980 ("section 147") applications.

I.2 Structures that a landholder wishes to install from the outset, on the way that is to be created, must be recorded as a limitation in the diversion order (and the definitive statement if the order is confirmed). This is in any event the preferred option, since any such limitations will be shown on the definitive map and statement and it is clearer to the public whether a structure is lawful. Nevertheless, it remains open to a landowner to apply subsequently for the authorisation of structures provided they fall within the terms of section 147.

I.3 It should therefore be made clear to an applicant for a diversion that the authorisation of any structures subsequent to the confirmation of a diversion order will be made strictly in line with the requirements of section 147 of the 1980 Act and will relate to the agricultural need to control the ingress or egress of animals and nothing else. If the applicant feels that a structure is required for any reason other than that catered for by section 147, for example property security or the prevention of fly-tipping, then the only way to achieve this is to specify a limitation in the schedule to the order.

I.4 In either case, authorities should make clear to an applicant that any proposals for structures on the right of way concerned will be considered under the authority's DDA responsibilities and this will be one of the elements that influence the decision on whether or not to proceed with the proposal.

Annex J – Providing information to people with disabilities

J.1 There is a requirement to record limitations on the definitive statement and to record authorised structures on written documents, both of which the public have a right to inspect. For those authorities that are making the record of the public rights of way network available on their map based internet sites the possibility of displaying information on all lawful structures (including the accessibility) offers potential benefits to members of the public who are planning a walk or a ride. It would be possible for someone to assess the number of structures that they were likely to encounter on their chosen route and the degree of inconvenience that they were likely to experience. The presentation of the information would allow someone with limited mobility to plan routes other than just those that are officially designated as “easy access”.

J.2 While the production and maintenance of this information on a website is a significant undertaking (and may highlight problems of unauthorised structures) it offers a benefit that may encourage increased public use of rights of way.

J.3 It is understood that there are a number of authorities who have never had a full statement, or have a statement of poor quality, for the area for which they are responsible. Addressing this shortcoming is likely to be a major undertaking, could divert resources from other areas of work and is therefore left to local decision as to where it lies in the list of priorities. Under such circumstances it might still be possible to offer a useful service to the public by presenting data obtained from surveys of the structures found on the ground on a map based internet site, where such information exists.

J.4 *[add sources of how to produce material to aid communication for a wide variety of disabled people such as – Easy Read publications, Braille, etc]*

Annex K – Other relevant or useful sources of information

Institute for Public Rights of Way and Access Management – Good Practice Guide

[Disability Discrimination Acts - summary](#)

[Disability Discrimination Acts](#)

DRAFT - this document has no official status

Annex X – Document revision history

Version	Reason for revision	Date released
1	First issue	

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**Stakeholder Working Group
on Public Rights of Way**

Meeting notes for the tenth meeting of the Group
held on 26th November 2009
at Ashdown House, 123 Victoria Street, London, SW1E 6DE

Attendance

- 9.1 The meeting was chaired by Ray Anderson and attended by: Alan Kind, Alasdair Mitchell, Alex Lewis, Andrea Graham, Carys Drew, Dave Waterman, Gavin Stark, Gwyn Williams, Janet Davis, John Thorp, Kate Ashbrook, Mark Weston, Mike Walker, Paul Johnson, Richard Gething, Robert Halstead, Rosalinde Shaw, Sarah Slade & Sue Steer.
- 9.2 Andy Mackintosh has recently taken up a new post within Natural England and attended the meeting in place of Terry Robinson.

Notes of the previous meeting

- 9.3 There were no changes to the draft meeting note and all action points had been completed.

Discussion of the second draft of the Group's report

- 9.4 The Secretariat had prepared a second draft of the report setting out the Group's proposals and this had been circulated to members. The main business of the meeting was to review this draft and discuss any amendments or further work needed to complete the report. The improvements to the draft report agreed during the meeting are not described within this note but will be captured by the Secretariat in a further draft of the report.
- 9.5 During the course of discussions several specific actions were identified for the Secretariat to seek further information or clarify details within the report:
- a. Liaise with Janet over statistics on use of the 1981 Act procedures.
 - b. Check that the statistics quoted in relation to backlogs refer to applications in general and not solely historic claims.
 - c. Find out whether PINS can provide statistics for objected modification orders and the way that cases are treated (i.e. whether by written representations/ hearing/public inquiry).
 - d. Check how the original Countryside Agency estimate of 20,000 lost ways was made and clarify this within the report.

- e. Liaise with Gwyn over the wording of the section of the report on nature conservation.
- f. Liaise with Dave to clarify details of the proposal over the scope of judicial/ statutory review.
- g. Liaise with Dave to clarify statutory provision in the CROW Act 2000 for closing the definitive map to downgrading or removal of recorded rights after the cut-off.
- h. Contact Ellen Duffy at DfT to clarify references to the Street Works Register and Local Street Gazetteer.

Completion of the Group's work

9.6 It was agreed that the Secretariat would produce a third draft of the report to incorporate the improvements to drafting discussed during the meeting and further to the actions listed above. This version of the report would be provided to Group members for limited circulation amongst their constituents. Group members have been very closely involved in the development of proposals and drafting of the report. The purpose in asking for review of the report by immediate constituents is to help the Group gauge reaction to the report and make improvements where it could be misunderstood or the Group's reasoning could be better explained. It was emphasised that members would need to play an active role in advocating the agreed package of proposals to their sectors. Circulation of the report would be controlled to ensure that the contents are not spread or quoted in the press ahead of the report being finalised by the Group and then published.

9.7 The third draft will be prepared for mid December. The Group requested that a further meeting be convened in the New Year to discuss final amendments to the report in the light of their consultations. The Secretariat will make arrangements for this to be on Thursday 21st January in London. It was hoped that this will allow for publication and launch of the report in March although it was noted that this timing could be affected by restrictions on announcements being made in the run up to a general election.

ACCESS NEWSLETTER

Issue 43

28 January 2010

Coastal Access

Amendments to the Countryside and Rights of Way (CROW) Act 2000 Section 3A Order update

Part 9 of the Marine and Coastal Access (MCA) Act 2009 includes provision for a section 3A Order to be made to amend the CROW Act as it applies to English coastal land. This Order is necessary for the delivery of the new coastal access rights as it will ensure that coastal land is included within the CROW Act's description of land to which the public has a right of access for the purposes of open-air recreation.

We held a public consultation on our proposals for amending the CROW Act (i.e. the contents of the section 3A Order) between 8 September and 1 December 2009 and, following analysis of the responses, our conclusion is that in general the responses supported the proposed changes. Respondents provided many helpful comments – which we are most grateful for – and we have amended the proposals in some respects as a result.

These changes were incorporated into the draft *'The Countryside (Coastal Margin) (England) Order 2010'*, which was laid before Parliament on 20 January 2010. The Order is subject to the affirmative resolution procedure – which means it must be debated and approved by both the House of Commons and the House of Lords before it can come into force.

- A summary of responses – outlining the main points raised by respondents to the consultation, together with the Government's response to them and an explanation of changes made to the original proposals – can be viewed at:
<http://www.defra.gov.uk/corporate/consult/coastal-access/index.htm>
- A copy of the draft section 3A Order and an explanatory memorandum can be viewed at:
<http://www.opsi.gov.uk/si/dsis2010>

Natural England's coastal access Scheme public consultation

Reminder of closing date:

The MCA Act 2009 requires Natural England to prepare a coastal access Scheme setting out its approach to implementation of the new coastal access rights. On 13 November 2009 Natural England launched a public consultation on the contents of its proposed Scheme.

You can view a copy of the consultation and documents outlining Natural England's proposed

Scheme and how to respond at:

<http://www.naturalengland.org.uk/ourwork/position/consultations/>

The final date for receipt of responses is **Friday 5 February 2010**.

Following the consultation, Natural England will prepare a final version of the Scheme for submission to the Secretary of State for approval. Approval of the Scheme must be received before any implementation of coastal access provisions can begin.

South Downs National Park update

Progress continues to be made on the South Downs National Park. The confirming Order was signed on 12 November 2009 which means that the National Park will definitely exist from 31 March 2010. There has been one legal challenge to the National Park which affects approximately 1.7 hectares of its total area.

An Order will be laid before Parliament in February to establish the National Park Authority from 1 April 2010 (it will take on its full functions a year later, on 1 April 2011). Recruitment of Authority members is well underway and they should all be appointed in good time.

The three County Councils within the National Park are deciding whether or not to delegate rights of way work to the National Park Authority.

English National Parks and the Broads Draft Circular consultation

Reminder of closing date:

A Defra consultation was published on 13 November 2009 seeking views on our proposals for a new National Park Circular and Vision to replace DoE Circular 12/96 in three key aspects:

- It introduces a new vision for the National Parks and the Broads over the next forty years;
- It sets out priorities for the National Park and the Broads Authorities to be pursued alongside meeting their statutory duties; it also relates to the duties of other bodies in respect of the Parks and the Broads; and
- It updates the statutory duties and functions of National Parks and the Broads Authorities as a consequence of changes to primary and secondary legislation since 1996.

The full consultation can be found at:

<http://www.defra.gov.uk/corporate/consult/nationalpark/index.htm>

The final date for receipt of responses is **Friday 5 February 2010**.