

## RIGHTS OF WAY ENFORCEMENT POLICY

### Introduction

South Gloucestershire Council is under a statutory duty imposed under section 130 of the Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment of, and prevent so far as possible, the unauthorised stopping up or obstruction of, all public rights of way within the area of the Authority. The aim is to ensure that all public rights of way remain in a condition that is safe and easy for use by the public. The Council carries out practical works to maintain them and when problems occur will use advice and persuasion and, where necessary, direct enforcement action or prosecution proceedings.

To this end, the Council will give advice, practical assistance and guidance to help farmers and landowners comply with the law. It will also provide information, education and advice to all those who use or wish to use the public rights of way network in South Gloucestershire.

### Principles

There are four basic principles, which underlie the implementation of this policy. These are:

1. **Proportionality** - relating the enforcement action to the seriousness of the breach. Some incidents have the potential to place the public's health and safety at risk, others interfere with people's enjoyment and rights and the Service's ability to carry out its activities. Enforcement action will be proportionate to the risks posed and to the seriousness of any breach of the law.
2. **Consistency** - taking a similar approach in similar circumstances. This does not mean uniformity of action. When assessing a breach Officers will need to exercise their professional discretion taking into account all the relevant factors of the case. Such relevant factors might include the seriousness of the breach, the impact or potential impact on the public, the attitude of those responsible for the breach and the history of previous breaches.
3. **Transparency** - ensures that those against whom enforcement action is taken are aware of the legislative requirements and aware of the likely consequences of non-compliance. Distinction will need to be made between statutory requirements and what is good practice or desirable but not compulsory. Transparency should aid those being regulated in complying with statutory requirements and minimise the need for further enforcement action. It also helps maintain public confidence in the ability of the Service to fulfil its duties. Where enforcement action is required an explanation (usually in writing) will be given of why that action is necessary and when it must be carried

out. Unless urgent action is required, an opportunity will be provided to discuss what is necessary to comply with the law.

4. **Targeting** – ensuring that enforcement action is directed primarily to where the risks or impact on the public is greatest. Action will be focused on those directly responsible for the breach and who are best placed to control it. Prioritisation will be based on a number of factors including; where public safety is being compromised; PRow forming National, Regional, strategic and local routes.

***At all stages when considering enforcement action, the Council will take full consideration of the Human Rights Act 1998.***

## **Scope of the Policy**

### **POLICY 1**

**Wherever obstructions or other breaches of relevant legislation are identified, South Gloucestershire Council will utilise its various enforcement powers as set out in this document to remedy the problem.**

Enforcement will be considered wherever appropriate statutory powers exist to deal with actions or inactions that may lead to risks to the public or to their rights being infringed. However, this policy is directed primarily towards the areas listed below. An Enforcement Action Plan (EAP) is contained in Appendix 1 to this document. The EAP includes general guidance illustrating the usual sequence of events.

Section 131 and 131A	- Unlawful surface disturbance
Section 134	- Interference by ploughing
Section 137	- Wilful obstruction
Section 137A	- Interference by crop other than grass
Section 143	- Interference by obstruction
Section 146	- Broken stile/gate
Section 149	- Material deposited on highway
Section 154(1)	- Overhanging vegetation
Section 154(2)	- Dangerous tree adjoining PRow
Section 162	- Placing rope across a highway
Section 164	- Barbed wire causing nuisance

Other miscellaneous nuisances, obstructions and offences will be dealt with in a comparable manner according the circumstances of the case.

## **Courses of Action**

There are several possible courses of action available to the Council:

1. **To Give Advice** - Advice may be given when we consider that the infringement is of a minor nature, and the Council is confident the owner or occupier involved will take the required corrective action. The owner or

occupier will be requested to take appropriate remedial action. An informal notice may be posted on site if the owner/occupier cannot be located.

2. **Enforcement Notices** - A formal Notice may be served, where appropriate, if an offence has been committed and where a request to take remedial action has failed. Such Notice will include provision for the Council to take direct action to remove obstructions or nuisances or to deal with the appropriate restoration of paths and to recover its costs.
3. **Prosecution** - In some circumstances the Council will prosecute if it believes it to be in the public interest to do so and this may be undertaken in tandem with the service of Notices (as above).

Whilst prosecutions are a last resort they remain an important part of our enforcement process. We will prosecute to provide a deterrent against offences being committed, but we will only take such action when other attempts to secure compliance have failed, or are considered likely to fail.

Each case is considered on its merits taking into account additional factors which reflect the Code of Practice for the Crown Prosecution Service.

Prosecution may be considered when one or more of the following applies:

- There is a significant risk to public safety
- There is a flagrant breach of the law, or if notice has been given that legal proceedings will be considered for future breaches.
- There has been a failure to heed advice or instructions or take corrective action.
- There is a history of infringements by the defendant.

#### Additional Considerations

- Is the prosecution in the public interest?
- Does the evidence provide a realistic prospect of conviction?
- Is a conviction likely to result in a significant fine or other penalty?
- Is the Offence widespread within the Council area?

Each case will be subjected to an ongoing process of review to ensure the level of enforcement action continues to be appropriate. Once we decide to prosecute we will proceed without undue delay.

## **Managing and Prioritising Enforcement Task List**

### **POLICY 2**

**In dealing with enforcement cases, priority will normally be given to cases where, in the view of Officers, one or more of the following criteria are met:**

1. **Where continuation of the obstruction provides an unacceptable health and safety risk;**
2. **Where resolution of the obstruction will provide a significantly enhanced PROW network;**
3. **Where resolution of the obstruction will contribute significantly to other Council objectives;**
4. **Where the obstruction adversely affects a PROW which forms part of a promoted route;<sup>1</sup>**
5. **Where a significant number of valid complaints have been received about the obstruction from a variety of independent sources**

There are a significant number of unresolved obstructions to the PROW network. Whilst only a small number seriously impact on the public's enjoyment of the network, it is important that all these issues are addressed so that users and landowners / occupiers have certainty about the extent of the public's rights. As a consequence it is necessary that a system of prioritising the enforcement work of the PROW Team is operated.

Non-seasonal obstructions (those not related to the cultivation of arable crops) coming to the attention of the PROW Team are categorised as follows:

<b>PRIORITY OBSTRUCTIONS</b>	Obstructions where one or more of the criteria set out in Policy 2 are met. These obstructions will be dealt with as a matter of urgency by the PROW Team.
<b>ROUTINE OBSTRUCTIONS</b>	Obstructions which do not meet the criteria set out in Policy 2 but which nonetheless may have a negative impact on the public trying to use the path. These obstructions will be added to a "Routine Obstructions" list and dealt with in chronological order of receipt as and when resources allow.
<b>DE MINIMIS OBSTRUCTIONS</b>	Obstructions which appear negligible in their impact on the public use of the path. These will be recorded on file but no further specific action proposed. Resolution of the issue will be sought if an opportunity arises, for instance if the obstructed path is identified on a search in the process of the sale of the surrounding land or if development is proposed for the affected land.

In some cases, as time passes it becomes progressively more difficult to secure the removal of an obstruction. Officers retain discretion to deal with "new" obstructions immediately, regardless of the above prioritisation, where that is considered an effective use of resources. This applies to all seasonal obstructions. Alternatively, "new" obstructions may be placed at the top of the "Routine Obstructions List" where that is more appropriate.

<sup>1</sup> a series of paths, circular or otherwise, which has been publicised by means of a leaflet, book or otherwise by South Gloucestershire. The Cotswold Way National Trail, The Dramway, The Frome Valley Walkway are examples of such routes.

## Use Of Public Path Orders (PPOs)

### POLICY 3

A Public Path Order will be considered as an acceptable alternative to enforcement action only where all of the following criteria are met:

1. The obstruction was not a deliberate attempt to interfere with the public's use of the route;
2. The obstruction is not of recent origin (the use of PPOs to deal with obstructions placed after the date of adoption of this policy will only be considered in exceptional circumstances);
3. In the opinion of an SGC PROW Officer, an alternative route exists that will fulfil the requirements of the relevant PPO legislation

A number of obstructions on PROW may be longstanding and of such a nature that successful enforcement action may be costly, difficult to achieve or undesirable. An example of this might be where buildings had been constructed over a PROW some years ago.

In such cases the making of a PPO (e.g. a diversion order to circumvent or avoid the obstruction) may appear a more appropriate and efficient response.

Nonetheless, to act as an effective deterrent an enforcement policy must avoid the danger of appearing to condone obstructing a PROW merely because it would be awkward or difficult to take direct action or prosecute. Consequently, the making of PPOs to deal with obstructions on PROW would be acceptable only in certain limited circumstances as detailed **Policy 3**.

In cases where a PPO is considered acceptable normal PPO procedures will be applied including provisions for the recovery of the Council's costs. In the event of the application being unsuccessful for any reason, then the case will be dealt with as a standard enforcement issue.

**Nothing in this Policy is in any way affects the powers available to the Council to take direct action to remove unsafe or unauthorised obstructions or deposits in the highway.**

### Enforcement Action Plan

- Complaint received from a member of the public.
- Complaint put onto CAMS (3 working days after receipt)
- Acknowledge Complaint/Report (3 working days after receipt)
- Field Officer investigates the complaint within a specified time limit appropriate to its prioritisation.
- Field Officer negotiates with the landowner/tenant to resolve the complaint within a specified time scale. (Normally not less than 10 working days)
- Field Officer revisits to ensure the work has been completed.
- If the work has not been completed the Field Officer may serve an Enforcement Notice (normally not less than 10 working days to comply)
- Local Member(s) and Parish Council to be alerted if notice served
- If necessary consult Legal over possible prosecution.
- If an Enforcement Notice or prosecution results advise complainant, local member(s) and parish council(s) of outcome.