

Public Rights of Way Policies

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Introduction

Public rights of way (PRoW) are routes over which the public have a legal right to pass and re-pass. This means that anyone can use them for that purpose, free of charge and at any time. Public rights of way provide both a recreational asset and a means to access local services in a sustainable way.

Gwynedd has a network of approximately 3800km of public rights of way. The total network length can be broken down into a number of different categories depending on the nature of the right. This is summarised in the table below:-

Status	Legal users	Symbol	Length (km)
Footpath			3328
Bridleway			301
Restricted Byway			79
Byway Open to All Traffic			39

The main responsibility for public rights of way in Gwynedd lies with Gwynedd Council. It has a wide range of statutory duties, that is, action it is obliged to take, as well as discretionary powers, that is, action it may take if it chooses.

As the 'highway authority' for Gwynedd, the Council is responsible for maintaining the public rights of way network and ensuring that each individual right of way is free from obstruction. The Council is also responsible for making changes to the legal record of rights of way known as the Definitive Map and Statement.

Prioritising rights of way issues

Usage of rights of way varies enormously from routes used frequently by many people to those which are never or hardly ever used. Thus, to apply the same level of resources simultaneously to every path would be inappropriate. To improve the way that the Council conducts its duties in relation to rights of way issues, a categorisation system was recently introduced, based on levels of apparent usage of rights of way and their current or potential utility. Given the resource limitations, it is logical that the resolution of problems on the network is prioritised so that the routes that are the most heavily used or those which are promoted are addressed first. The categorisation system, as illustrated in Appendix 1 of the Maintenance and Enforcement Policies, is an essential foundation of the Council's current working practices and proposed policies. The highest priority will be given to paths in Categories 1 & 2.

The categorisation process was undertaken in consultation with the Community and Town Councils. Given the need to consider current and future needs as part of the Rights of Way Improvement Plan (ROWIP) process (see below), the categories allocated to rights of way may change over time in accordance with changing demands. Should the Council believe there to be reasonable grounds for changing an individual path category or group of paths, the views of the relevant Community or Town Council will be sought. The Council may, in the future, undertake a comprehensive review of part or the whole path network if it is deemed necessary.

As part of the ROWIP process, five path categories were established. However, in order to provide greater clarity, the categorisation system has since been refined from five to four categories and the definitions of each individual category have been expanded and clarified. It is hoped that this will assist the Council and its partners in categorising paths in a meaningful way thereby ensuring that financial resources are applied appropriately and effectively.

Gwynedd Council's Rights of Way Improvement Plan

Recent legislation such as the Countryside and Rights of Way (CROW) Act 2000 has introduced additional responsibilities for local authorities, with an emphasis placed on a strategic approach to improving rights of way. The CROW Act required all highway authorities to publish a Rights of Way Improvement Plan (ROWIP) for their area by November 2007. The ROWIP aims to identify, prioritise and plan for improvements to the public rights of way network over a 10 year period. Gwynedd Council formally adopted its ROWIP in October 2007.

As part of the Council's ROWIP process, it has been resolved to produce a set of policies to help the Council achieve its priorities as well as guiding the use of resources in the future.

The policies will set out the approach to be taken by the Council in exercising its duties to ensure the legislation is effectively complied with, given available resources. It is also hoped that these policies will assist members of the public, landowners, path users and other interested parties to understand more easily some of the legislation which applies to public rights of way and the way which Gwynedd Council will apply the legislation to the various issues. This document includes the following:-

- Public Rights of Way Maintenance Policy
- Public Rights of Way Enforcement Policy
- Definitive Map Modification Order Policy
- Public Path Order Policy

Maintaining Rights of Way

Both Gwynedd Council and landowners have responsibilities regarding the Rights of Way network.

Gwynedd Council - Statement of intent

Gwynedd Council will continue to assert and protect the rights of the public to the use and enjoyment of public rights of way by adopting a fair and robust policy towards maintenance and enforcement action, with the emphasis being placed on co-operation wherever achievable, but supported by formal legal action where necessary.

Gwynedd Council Responsibilities

- Ensures that Rights of Way are not obstructed
- Maintains the surface in a fit condition for its intended use
 - Maintains some bridges
 - Signposts and way marks paths
 - Authorises stiles and gates
- Keeps the Definitive Map up to date

Landowners Responsibilities

- Should not obstruct paths or deter use of them
- Maintain most stiles and gates (see policy on Categorisation)
 - Keep back side growth and overhanging vegetation
- Reinstate path across fields after ploughing or planting crops
 - Should not plough paths at field edges
- Should not keep dangerous animals (including certain bulls) on paths

What are Public Rights of Way?

Public rights of way are highways other than all-purpose public roads. Gwynedd has over 3,800 individual public rights of way, many of which are used largely for recreation - particularly walking, cycling, horse-riding and driving "off-road" motor vehicles. The majority of the network is used on a casual basis by local people and visitors.

How do we maintain and protect the Rights of Way Network?

The management of the Maintenance function of Public Rights of Way (PRoW) in Gwynedd is governed on a national level primarily by the statutory legislation of the National Parks and Access to the Countryside Act 1949 (NPACA49), the Countryside Act 1968 (CA68), the Highways Act 1980 (HA80), the Wildlife and Countryside Act 1981 (WCA81), the Road Traffic

Regulation Act 1984 (RTRA84), the Road Traffic Act 1988 (RTA88), the Rights of Way Act 1990 (RWA90), the Countryside and Rights of Way Act 2000 (CRoW 2000), Disability Discrimination Acts 1995 & 2005, Natural Environment and Rural Communities Act 2006 (NERC 2006) and a variety of regulations, guidance and Wales Assembly Government policies.

In addition to Gwynedd Council as Highway Authority, the Snowdonia National Park Authority and Town and Community Councils have powers to undertake maintenance works in their respective areas. Where these Authorities utilise their powers, Gwynedd Council may make contributions towards their costs.

The foremost Powers and Duties relating to Public Rights of Way are listed in Appendix 2. In addition, the Council has a network of permissive paths on land either in the authority's ownership, or subject to agreement with landowners. These are not Public Rights of Way. However, for completeness, policies relating to these paths are given in **Appendix 3**.

1.1 Prioritisation of Public Rights of Way maintenance

Priority for the maintenance and removal of obstructions as far as possible shall be given to issues on routes identified in accordance with the Categories detailed in Appendix 1, or if they pose a risk to health & safety of path users, irrespective of Category.

Section 130A of the Highways Act 1980, inserted by Section 63 of the Countryside and Rights of Way Act 2000 allows members of the public to serve notice on the Council to take action to remove certain obstructions from specific PRow. If the complainant is not satisfied that the obstruction has been removed there is recourse to seek an Order from the Magistrates Court to remove the obstruction. Consideration and priority will be given in taking any action, to the Category of path concerned.

[Highways Act 1980 Section 130A](#)

1.2. Signposting and Waymarking

The Council will ensure that public rights of way are signed in accordance with their correct legal status (unless it considers signage unnecessary and the Community Council agree) where they leave metalled routes, as far as resources allow and prioritised in accordance with the Category of path.

Installation of new or replacement rights of way signposts will normally be by provision of a timber or metal finger post with directional arrow and status of the right of way. Some sealed surface paths in urban areas will not be signed if the Community / Town Council agree.

Where the right of way forms part of a promoted route, the Council will consider more detailed signage and waymarking, such as named routes, specific destinations, distances, etc. and will seek to meet the extra costs involved either from internal or external funding sources. Waymarking will be consistent with standard guidance as set out by Natural England in its publication "Waymarking Public Rights of Way".

The Council will endeavour to provide adequate waymarking or other signage as appropriate wherever there might otherwise be difficulty in identifying the route of a path.

There shall be a presumption against giving direct assistance to the production of independent guides or associated logo discs, unless the Council can be fully satisfied that

- the local community, including landowners and occupiers, have been fully consulted and given approval for such waymarking to take place and
- the route(s) compliment the strategic path network and do not add significantly to the existing management requirements of promoted routes within Gwynedd.

[Countryside Act 1968 s27](#)

1.3. Maintenance of stiles and gates

It is the duty of the landowner to ensure that any stiles and gates are kept in a good state of repair. The Council's duty only extends to ensuring that the landowner complies with this obligation and to provide a grant of 25% towards repairing or replacing such structures. When considering the replacement or installation of new gates and stiles, the Council will seek the least restrictive option in accordance with BS 5709:2006 of gap, then gate, then stile; The Council will not permit replacement furniture of a more restrictive character. The Council has a power to provide a discretionary grant, which will normally be as detailed below:

[Highways Act 1980 s 146,147](#), [Disability Discrimination Acts 1995 & 2005](#).

Where the Council requests a less restrictive option it will usually offer to meet any extra costs involved (e.g. where a kissing-gate is installed to replace a stile) either from internal or external funding sources.

[Highways Act 1980 s145 & 175A \(inserted by Disabled Persons Act 1981\)](#).

Category 1. There shall be a presumption that Gwynedd Council will undertake 100% of the cost of the works required to *maintain* or *replace* (only) existing furniture after consultation with the landowner, but the landowner remains legally responsible for the work. There shall be a presumption against requests for *additional* furniture being granted, which shall in any event be wholly funded by the landowner. No additional stile or other restrictive furniture will normally be permitted.

Category 2. There shall be a presumption that Gwynedd Council will undertake 100% of the cost of the works required to *maintain* or *replace* (only) existing furniture after consultation with the landowner, but the landowner remains legally responsible for the work. There shall be a presumption against requests for additional furniture being granted, which shall in any event be wholly funded by the landowner. No additional stiles or other restrictive furniture will normally be permitted, except in exceptional circumstances.

Category 3 & 4. For existing furniture, Gwynedd Council will normally supply materials to landowners free of charge for them to erect at their own expense, but officers may elect to arrange erection as well, dependant upon circumstances. No furniture more restrictive than employed hitherto will be permitted. For any additional furniture requests received, which shall be wholly funded by the landowner, the least restrictive means of access may be authorised with the presumption that ladder stiles shall only be used where no other solution is practicable, and in exceptional circumstances only.

In order to preserve the character of the area, masonry stiles will normally be maintained by Gwynedd Council but in order to improve access, subject to landowner approval, a gate may be

provided in addition or as a replacement. Masonry stiles will only be maintained on Category 3 & 4 paths if the path otherwise is clear of obstructions and other issues and complaints are received as to the condition of the stile.

Circumstances for which the Council can give authorisation for the erection of new stiles/ gates on footpaths and bridleways only is that the structures are required for stock control purposes, (Section 147 HA 1980). Barriers can also be maintained by the Council under Sections 115B & 66 Highways Act 1980 (as amended by Section 70 CRoW Act 2000).

Highways Act 1980 sections 66 (as amended by the CRoW Act 2000 section 70) 115b & 147.

The Council reserves the right to withdraw the discretionary grant from landowners who fail to co-operate, or are obstructing other PRow.

Highways Act 1980 s146

1.4. Maintenance of surfaces

The surface of most PRow's is vested in the Council as Highway Authority, the landowners interest only extends to the sub soil. The Council will maintain the surface of PRow's appropriate to their designated route category and status so that they are safe and fit for all lawful public use. Consideration may be made for surface improvements necessary to satisfy new duties set out in the CRoW Act 2000 and the Disability Discrimination Acts 1995 and 2005.

On BOAT's where motorised vehicular traffic is significant to the extent that maintenance of a satisfactory surface using unbound materials is becoming unreasonable for the resources of the PRow Unit, the following shall apply:

The works identified shall be carried out with finance from the Public Rights of Way maintenance budget (unless contributions can be obtained from external sources, such as significant users or Statutory Undertakers) and shall be subject to a maximum of 10% of the budget available in that area in any one financial year. Suitable works would include spreading and rolling tar planings followed by double spray of surface dressing, or application of bitumen macadam to the Highway Authority's specification, by machine.

In the case of double sprayed tar planings (only), in the following surface dressing season, a further layer be applied, again being financed from the PRow maintenance budget and be included in that years' 10% maximum figure.

At this stage the BOAT would conform to the "Rural Roads: Guidelines for Adoption" document approved by Gwynedd Council. Thereafter, the route will be adopted by publication of Notices under Section 228, Highways Act 1980 and will then be routinely inspected and repaired by the Highways Department in line with the work undertaken by them on other roads of a similar nature.

Ways over which there are private vehicular rights will only receive the level of maintenance that is necessary for its legal status. The Council may take enforcement action in appropriate cases if the surface of a PRow is unlawfully disturbed or damaged (does not apply to vehicular damage on BOATS). The Council may consider making a contribution of up to 5% towards the cost of *maintenance* of the surface to the extent required for the level and usage of public rights.

The presumption is made against the authorisation of new sealed surfaces on existing unsurfaced PRow, unless it can be demonstrated that such a surface is compatible with the existing status and use of the way, and a need for such a change of surface is shown. The Council has to have in mind the increased maintenance responsibility incurred if authorisation is given. In most cases the specification will require the approval of Gwynedd Highways and be subject to normal tendering procedures if a Council contribution is to be made.

Landowners and occupiers who wish to upgrade the surface of a PRow over which there are private vehicular rights must apply in writing to the Council. Full details of the works to be undertaken and proof of the landowners' agreement will be required before permission to alter the surface can be considered. Where *upgrading* the surface is agreed this will normally be on the basis that the applicant will pay the costs involved and continue to maintain the surface and any necessary drains to the new standard at their own expense.

The Council will consider making Traffic Regulation Orders on routes receiving regular or significant damage from vehicular use whether lawful or unlawful, in accordance with DETR guidance 'Making the Best of Byways'.

The Council is also responsible for ensuring that vegetation growing in the surface of the PRow is kept under control and does not make the route difficult to use. The Council or Community Councils acting as its agent may undertake annual maintenance as required with one, two or three cuts on paths dependent upon route hierarchy, availability and vegetation type as indicated below:

- Category 1.** Up to 3 cuts per year in selected locations where persistent complaints have been received over time, in order to maintain the path open and convenient to use unless exceptional circumstances dictate a greater frequency.
- Category 2.** No more than 2 cuts per year in selected locations where persistent complaints have been received over time to maintain the path open and convenient to use unless exceptional circumstances dictate a greater frequency.
- Category 3.** Where the growth is obstructive and complaints are received and subject to the availability of budget, no more than 1 cut per year in selected locations, concentrating on more restrictive growth such as bracken, bramble, heather and gorse, unless exceptional circumstances dictate a greater frequency or more comprehensive works.
- Category 4** No routine cuts, but subject to availability of budget, growth may be cleared from time to time if it is obstructive and complaints are received.

*Highway Act 1980 sections 41, 50, 131, 131A and Schedule 12A
Road Traffic Regulation Act 1984 section 1, 14, 16*

1.5. RoW reinstatement widths

Gwynedd Council will assume the minimum widths of PRows as defined in Schedule 12A Highways Act 1980, unless these widths are not relevant – e.g. in relation to enclosed lanes, where the minimum width will be the available area between the historic boundaries. It will consider evidence to the contrary on a case by case basis.

If the width of a way is proved e.g. by inclusion in the statement accompanying the Definitive Map, that width is the minimum width. If it is not proved, the minimum width is:

- cross field footpath 1.0m
- headland footpath 1.5m
- cross field bridleway 2m
- headland bridleway or carriageway (whether cross field or headland) 3 metres.

Where paths are diverted or development is to take place adjacent, it shall be presumed that minimum widths are 2.0m for footpaths, 3.0m for bridleways and 3.5m for carriageways unless exceptional conditions apply.

[Highways Act 1980, schedule 12A](#)

1.6. Maintenance of bridges, culverts and other structures

The Council is responsible for most footbridges, but where a public footpath or bridleway crosses a bridge, over which there are private vehicular rights the landowner may also be responsible for certain maintenance and repairs. The Council may consider a discretionary grant towards these works, which will not exceed the cost of provision of a footbridge at that location. If such a bridge is washed away, or has to be demolished for reasons of safety, then the Council may agree with the landowner to replace it with a footbridge or bridle bridge as appropriate, if vehicular use is no longer required. In such circumstances, the Council would be wholly responsible for the new structure.

Replacement and provision of new structures will be prioritised on the basis of public demand and where there is justification (except in so far as is necessary to comply with its legal maintenance duties), with priority in accordance with the path Category and resources available.

Network Rail and the Environment Agency (Wales) retain maintenance liability for many of their structures. The Council would make no contributory grant towards maintenance of these structures. The Council would still retain responsibility for the surface of the path over these structures.

Other lawful structures necessary to safeguard the availability of a PRow requiring maintenance works may receive a contributory grant from the Council dependent upon other private interests in the structure.

Where a landowner or occupier creates a new ditch, pond or channel, etc., that crosses an existing PRow a suitable bridge or structure must be provided by the developer which can accommodate all legitimate users safely and without restriction. The absence of a suitable bridge or other structure can be considered as “wilful obstruction” on behalf of the landowner or occupier.

[Highways Act 1980 sections 91, 92, 146 & 328\(2\)](#)

1.7. Drainage and flood alleviation works

Gwynedd Council shall comply with Section 100 Highways Act 1980, regarding drainage on and off all public rights of way.

In responding to flood alleviation schemes that would or could cause a PRow to flood more frequently or significantly increase the current depth of flooding, the Council may request that

provision be made to protect the rights of the public to the use and enjoyment of PRow. This may be achieved through engineering works, provision of bridges or a diversion of the way. Agreement will be sought that the future maintenance liability of any new structure resulting from this provision and all associated costs will rest with the organisation carrying out the flood alleviation project.

Where the Council considers the effect of any such flood alleviation schemes to be of a de minimis nature, no further provision for the ways may be required.

Special consideration must be given to works dealing with drainage or flood alleviation as these works can impact on wetland habitats.

Highways Act 1980, section 100

1.8. Surveys and inspections

Inspections of the rights of way network will normally occur in three ways:

1.8.1. Surveys by staff, who will endeavour to cover 50% of the Category 1 network per annum to ensure the whole Category 1 network is inspected at least every 2 years.

1.8.2. Surveys undertaken by user groups, covering a random 5% sample of the RoW network each year. (2.5% of the network to be surveyed in the Spring and 2.5% in the Autumn).

1.8.3. Enforcement and maintenance inspections, as a result of a report or complaint. These will be geographically restricted to the vicinity of the occurrence and based on PRow prioritisation categories (see 1.1).

1.9. Cycle racing and motor vehicle trials on Public Rights of Way

Gwynedd Council will permit such events over PRowS assuming full compliance by organisers and participants to Section 31 & Section 33 Road Traffic Act 1988 (RTA 1988). Authorisation may be withheld in cases where a trial has previously failed to fulfil their duties under RTA 1988, or where other good reasons for doing so exist.

Road Traffic Act 1988 sections 31 & 33

1.10. Dogs on Public Rights of Way

In instances where the Council has been made aware of dogs worrying livestock, dog fouling or any other issues involving dogs on PRowS, signs will be provided to landowners requesting users to keep their dogs under close control, or requesting the dog owner to remove dog faeces. Where significant problems arise, the matter will be referred to the appropriate enforcement unit within Gwynedd Council.

The Council reserves the right to use its powers under Section 27, Road Traffic Act 1988 requiring dogs to be kept on a lead on specified PRow. Failure to comply is an offence.

No existing furniture will be changed to allow access for dogs onto PRowS, but consideration will be made in cases where both the relevant landowners and users have requested so. However projects carried out through the Rights of Way Improvement Plan will encourage landowners to permit new gates in areas close to population in order to improve access and prevent damage to existing furniture and fences.

1.11. Dangerous land adjoining a Public Right of Way

From time to time the Council encounters unfenced dangers on adjoining land, which present hazards to path users or may constitute a statutory nuisance. Local Authorities have a duty to protect path users from such dangers. The Council may take action under Section 165 Highways Act 1980.

The Council may require the owner of the dangerous land to carry out the necessary works by service of notice. If the owner does not comply with the notice, the Council may carry out the work and recover the costs from the owner.

Highways Act 1980 section 165. Mines and Quarries Act 1954 section 151(1), Environmental Protection Act 1990

1.12. Funding of maintenance works & improvements

Routine maintenance work will be funded by the Rights of Way maintenance budget. Structures and bridges over 3.5m – 7.0m (depending upon circumstances) are funded through other sources.

Improvement schemes and non-statutory works will be addressed through the Rights of Way Improvement Plan (RoWIP) grant or through other sources of funding. The Council will not contribute to the improvement and repair of private roads (except in so far as is necessary to comply with its legal maintenance duties) over which there are also rights of way, unless the damage has been caused due to lawful public use of the way (excluding public use of BOATs).

The Council will not, unless it is necessary in the highway interest, contribute to the provision or maintenance of new fencing on or adjacent to PRow. Improvement schemes addressed through the RoWIP grant may include the provision of fencing works.

1.13. Endorsement of promoted trails

It is expected that all new promoted route road junctions and crossings will have been inspected and checked by the promoter that they comply with the vision requirements in the County Surveyor's Society "All Wales Estate Development Highways Design Guide" (1996) prior to their publication. Gwynedd Council's PRow Unit will require evidence of agreement of permissive paths (i.e. not PRow) as part of a promoted route for a period of a minimum of 10 years from date of endorsement, and be satisfied with the terms of any such agreement.

Routes developed by individuals or organisations without prior consultation with the PRow Unit will not be endorsed for inclusion on O.S maps. Individuals and organisations will be encouraged to discuss such ideas with the PRow Unit in the first instance to assess how their proposal fits in with the strategic RoWIP. Any unauthorised waymarking may be removed and any costs incurred may be charged to the individual or organisation responsible.

Highways Act 1980 section 132

1.14. Historical and Archaeological considerations

When PRow maintenance or improvement works may conflict with sites recorded as Ancient Monuments or Listed Structures, liaison must be undertaken in consultation with the Council or National Park Conservation Officer, as appropriate.

1.15. Ecological/Biodiversity aspects

When physical maintenance or improvement works are proposed, it is important to consider the ecological impact of such proposals.

Works to PRoW crossing land designated for its ecological or geological interest should take into account the nature conservation interest of the site to ensure that habitats, species or geological features are not damaged. Under regulation 48 of the Habitats Regulations 1994, proposals within or associated with European Sites such as Special Areas of Conservation (SAC) or Special Protection Area (SPA) may need to be screened for the likelihood of the proposal to have a significant impact on an European Site. Works within a Site of Special Scientific Interest (SSSI) or National Nature Reserve (NNR) may constitute a potentially damaging operation and CCW should be consulted. Additionally areas of Gwynedd may contain Wildlife Sites such as Local Nature Reserves (LNR) which are non-statutory designations. Where it is thought that work on a PRoW may affect an area of wildlife importance, ecological advice should be sought from Gwynedd Council's Biodiversity Team.

Care must be taken during any maintenance works to prevent any disturbance or damage to declining or vulnerable species, many of which are legally protected. Particular importance should be paid to the timing of this work in order to avoid harming protected species. Officers should be aware of the legislation that covers the key species (birds, plants and animals) and what considerations they should take.

In addition section 40, Natural Environment and Rural Communities Act 2006 places a statutory obligation on all Local Authority Services concerning biodiversity stating "Every public body must, in exercising its functions, must have regard, so far as it is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity". This means that biodiversity conservation and enhancement is appropriately integrated throughout all departmental policies and activities, and that species and habitats of importance are properly protected in line with nature conservation obligations.

Special consideration must be taken for works dealing with drainage or flood alleviation as these works can impact on wetland habitats.

Any use of herbicides must comply with Environment Agency guidance and only certain herbicides should be used near water courses. Invasive species such as Japanese Knotweed may grow along PROW and these should not be strimmed but treated following Environment Agency guidelines.

PRoW should not be over sprayed and if the product label advises that people should stay out of a crop which has been sprayed, consideration should be given to the need for warning signs where PRoW cross or join the treated area.

Conservation (Natural, Habitats &c.) Regulations 1994, Wildlife and Countryside Act 1981, Natural Environment and Rural Communities Act 2006, Badger Act 1992, Health and Safety at Work, etc., Act 1974

1.16. Environment and Planning

When physical maintenance or improvement works are proposed to a PRoW, it is important to consider the visual impact of such proposals on the wider landscape, particularly within the boundary of any special environmental designation such as Areas of Outstanding Natural Beauty (AONBs), Landscape Conservation Areas (LCA s) and the Snowdonia National Park. Consultation with Local Authority Planning Departments will be made in cases where planning permission may be required for new routes.

1.17. Contractors/Tenders

The PRow Unit will comply with the Standing Orders concerning the letting of contracts included in the Council's constitution.

1.18. Cycling.

The Council may permit the development of cycleways over existing PRow assuming the consent has been sought from all relevant landowners/occupiers, and provided that this does not adversely affect existing public rights. Where suitable the Council will require new cyclepaths to be available for multi use (i.e. wheelchair and equestrian use).

1.19. Permissive Path Agreements

The Council may enter into Permissive Path Agreements (i.e. not PRow) with landowners where it considers there is an apparent benefit to the public in doing so. Permissive Path Agreements will vary in terms and conditions dependent on each case. However if a Permissive Path Agreement is made to reduce problems associated with a particular definitive right of way then any such agreement will not affect the right of an individual from using that particular legal definitive path.

Agreements may also be considered as part of a RoWIP proposal.

Where the Council has a policy as outlined above it will consider in appropriate cases whether an exception should be made to it on its merits.

Appendix 1 – Path Categories

Category	
1	<p>Paths that facilitate people's movement. These will usually already have significant usage or form connections within towns, villages or between public transport facilities, car parks, and pleasure attractions.</p> <p>Routes promoted by the Wales Assembly Government, Gwynedd Council, or the Health Authorities, together with well-used urban and inter-urban paths mostly with made or hard surfaces, including paths upgraded to "Access for All". No stiles except in exceptional circumstances in very rural areas, where every effort will be made to eliminate them as soon as practicable.</p>
2	<p>Popular paths used mainly for pleasure including paths around communities, circular walks, access to beaches or promoted routes.</p> <p>Well worn paths without necessarily having a made surface, routes promoted by Community groups if not included in Category 1. Very few stiles, with a presumption that these will be changed to gates in time whenever practicable.</p>
3	<p>Paths, with only occasional use but whilst being less used, form significant connections between the paths in categories 1 and 2 or between communities where there is currently little to encourage walking. These may include potential links between communities.</p> <p>Lesser used paths which nevertheless form useful links or potential links.</p>
4	<p>Path with no obvious benefit or potential and where a reasonable convenient alternative route exists on higher category paths.</p> <p>Paths with known Definitive Map anomalies.</p> <p>Closely parallel routes, where these paths are the much less attractive option, or cul-de-sac paths with little or no future potential for forming practical connections to other access.</p>

Note: All path Categories are under continuous review.

Appendix 2 - Foremost Duties and Powers relating to Public Rights of Way

<p>Duties</p>	<ul style="list-style-type: none"> • • To assert and protect the rights of the public to the use and enjoyment of any highway for which we are the highway authority, including any roadside waste which forms part of it. [Highways [HA80 s1; amended by CRoW2000 s63] • • To have regard to the needs of people with mobility problems when authorising stiles etc [HA80 s147(2A) and (2B) amended by CRoW2000 s69] • • To maintain highways maintainable at public expense [HA80 s41] • • To erect and maintain signposts where any Public Right of Way Traffic (PRoW) leaves a metalled road [CA68 s27] • • To erect such signposts if in the opinion of the Highway Authority this is required to assist persons unfamiliar with the locality to follow the way [CA68 s27] unless Parish Councils specifically request otherwise • • Compliance with the Disability Discrimination Act 1995 [DDA95] • • To react to notice to remove obstruction [HA80 s130A]
	<ul style="list-style-type: none"> • • To enforce provision re; ploughing of footpaths or bridleways [HA80 s134; amended RWA90 s1] • • To erect/maintain signposts along any FP/BW/BOAT [CA68 s27] • • Powers as to gates across highways [HA80 s145] • • Powers to prosecute on obstructions [HA80 s137] • • Authorisation of new barrier [HA80 115b & 66 as amended by CRoW s70] • • Maintenance of privately maintainable footpaths & bridleways [HA80 s50], • • To prosecute for damaging highway, etc [HA80 s131] • • To prosecute for disturbance of surface of certain highways [HA80 s131A] • • Construction of bridge maintainable at public expense [HA80 s91] • • To reconstruct a bridge forming part of a public path [HA80 s92] • • To repair stiles etc [HA80 s146] • • To drain highways [HA80 s100] • • To remove unauthorised marks [HA80 s132] • • To remove structures [HA80 s143] • • Ploughing etc of footpath or bridleway [HA80 s134] • • Power to order offender to remove obstruction [HA80 137ZA] • • Interference by crops [HA80 s137A] • • Powers of the Highway Authority in relation to interference with highway [HA80 schedule 12A] • • Power to remove structures from highway [HA80 s143] • • Action on the deposit of things on highway [HA80] s148(c) • • Prohibition on keeping bulls on land crossed by PRoW [WCA81 s 59] • • To make Traffic Regulation Orders [RTRA84 s1] • • To make temporary Traffic Regulation Orders [RTRA84 s14 & s 16] • • To require removal of barbed wire [HA80 s164] • • To require the removal of signs [RTRA84 s69] • • Action on certain kinds of danger or annoyance for highway users [HA80 s161] • • Carrying Firearms in a public place [Firearms Act 1968 (FA68) s 19] • • Damage to highway consequent on exclusion of sun and wind [HA80 s136] • • To require felling or cutting of trees or hedges that are overhanging or a danger [HA80 s154; amended CRoW2000 s65] • • Fear or provocation of violence [Public Order Act 1986 (POA86) s4] • • Action on displaying on public paths notices deterring public use [NPACA49 s57] • • To authorise erection of stiles etc on FP or BW [HA80 s147] • • Regulation of cycle racing on public ways [RTA88 s31] • • Control of use of FP and BW for motor vehicle trials [RTA88 s33] • • Action on Dangerous land adjoining street [HA80 s 165]

Appendix 3 - Permissive Routes (Not Public Rights of Way)

Permissive routes.

The Council has established permissive paths on land either in the authority's ownership or by agreement with landowners, these include:

1. **The Lonydd Glas network** – these offer approximately 50km of mainly off-road routes within Gwynedd, designed especially for walking and cycling, although equestrians have permission to use some sections. Established using disused railway lines, the paths are used by permission and maintained by Gwynedd Council and the Snowdonia National Park Authority.
2. **Managed sites** – these include Local Nature Reserves and community woodlands.
3. **Coastal Path** – sections of the Llyn Coastal path are permissive paths. Most agreements are for 25 years.
4. **Barmouth Viaduct** – subject to a seasonal toll and annual agreement with Network Rail.

The public use of these facilities is encouraged and promoted through the use of literature, on site information or on the Council's and other web sites.

In general terms all of the routes in question will be treated as for category 1 or 2 paths, however there are some important differences:

1. The Council's primary responsibility is that of landowner, in that it must exercise its duty of care to the public who use its facilities.
2. The routes may be temporarily closed or altered without reference to legislation covering PRow's. However, it is good practice to consult and inform the public or other agencies of proposed closures or changes.
3. The authority is not obliged to fund the maintenance of these routes.
4. No capital funds are allocated for the inspection and maintenance of major bridges and structures.

Maintenance and inspections

Both planned and reactive maintenance is funded through a small annual budget.

a. Planned maintenance:

i. Lonydd Glas : the key maintenance aims are:

- to keep a corridor approximately 4m wide to a height of 3m free from overgrowth and obstruction free (an additional height allowance is made for sections on which horse riding is permitted).
- keep gateways, access points, parking and seating areas free from litter and generally "tidy"

An annual maintenance schedule is prepared with the work awarded to contractors following a tendering process. Most sections of the network are cut back / mown twice during the growing season, the main gateways and high profile sites on the outskirts of settlements receive 3 visits.

ii. Sites and coastal path: the key maintenance aims are:

- keep paths free from obstruction
- clearly signposted and way marked

Annual maintenance schedules are prepared and are generally awarded to contractors on an ad-hoc basis. Often vegetation control is carried out as part of wider habitat management tasks.

On some sites the use of contractors is supplemented by labour provided by local volunteers or by personnel on employment / training schemes.

iii. Barmouth Viaduct: the key maintenance aims are:

- keep the path open and free from obstruction
- repair handrails and replace deck planks as necessary to ensure public safety

The bridge and approaches are inspected frequently. Routine works are carried out by the Council's Direct Labour force as required. Major works are generally awarded to railway contractors in conjunction with works being carried out by, and with the agreement of, Network Rail.

b. Reactive maintenance:

Remaining funding is used towards reactive work such as dealing with dangerous trees, vandalism or the aftermath of extreme weather.

Limited funding does not allow for planned maintenance of bridges, retaining walls, drainage systems and surfaces.

Any additional work to safeguard, enhance or upgrade the facilities is dependent on receipt of grant aid or other support.

Public information

Material to advise and assist the visiting public is made available at access points onto the Lonydd Glas and managed sites. This information comprises:

- A code of conduct for users of the Lonydd Glas
- Guidance and route description – distances, gradients, surfacing
- Main paths within sites will be signed or way marked to discourage the use of informal paths.
- The Country Code will be displayed wherever possible.

Inspections

Inspections are carried out as part of regular site visits or in response to complaints or reports by the public.

Enforcing Public Rights of Way Law

Both Gwynedd Council and landowners have responsibilities regarding the Rights of Way network.

Gwynedd Council

- Ensures that Rights of Way are not obstructed
- Maintains the surface in a fit condition for its intended use
 - Maintains some bridges
 - Signposts and way marks paths
 - Authorises stiles and gates
- Keeps the Definitive Map up to date

Landowners

- Should not obstruct paths or deter use of them
- Maintain most stiles and gates (see policy on categorisation)
 - Keep back side growth and overhanging vegetation
- Reinstate path across fields after ploughing or planting crops
 - Should not plough paths at field edges
- Should not keep dangerous animals (including certain bulls) on paths

Gwynedd Council - Statement of intent

Gwynedd Council will continue to assert and protect the rights of the public to the use and enjoyment of public rights of way by adopting a fair and robust policy towards maintenance and enforcement action, with the emphasis being placed on co-operation wherever achievable, but supported by formal legal action where necessary.

How will we do this?

2.1. Protection of Public Rights

Gwynedd Council will carry out their duty to assert and protect the rights of the public to the use and enjoyment of any highway for which they are highway authority as required by Section 130 of the Highways Act 1980. However, prioritisation of maintenance and the removal of obstructions from public rights of way (PRoW) will take into consideration the nature of the issue, whether or not it is a recent act, and the category of the path (refer to Appendix 1).

There shall be a presumption that the Council will seek the quickest practicable resolution of issues on paths in categories 1 and 2, by direct action if necessary. In dealing with enforcement cases on paths in categories 3 & 4, priority will be given to cases where one or more of the following criteria are met:

1.	The continuation of the obstruction provides an unacceptable health and safety risk;
2.	The resolution of the obstruction will provide a significantly enhanced Public Rights of Way network;
3.	A significant number of valid complaints have been received about the obstruction from a

variety of independent sources.

Land managers may be notified of their obligations as soon as any obstruction is identified. If their voluntary cooperation in removing obstructions is not forthcoming appropriate enforcement action may be taken, this may include immediate removal of the obstruction concerned, the service of a statutory notice and/or the prosecution of the persons responsible. Where possible the Council may also seek to recover costs of action from the person causing the obstruction.

The main statutory offences relevant to Public Rights of Way are:

Highways Act 1980 sections 131(1)(b), 131(1)(c), 131(2), 131A, 132, 134, 137, 137ZA inserted by CRow, 137A, 148(c), 164, and schedule 12A.

2.2. Intimidation or threatening behaviour intended to deter use of a Public Right of Way

Following any report of intimidation or threatening behaviour the Council will seek to address any underlying issues which have led to the situation arising. Consideration will be given as to what enforcement action might be taken and/or whether complaints should be referred to the police.

Public Order Act 1986 section 4 & Highways Act 1980 section 137

2.3. Misleading signs and notices affecting Public Rights of Way

Following a report of a misleading sign erected on or adjacent to a PRow, land managers may be notified of their obligations under Section 132 of the Highways Act 1980 and Section 57 of the National Parks and Access to the Countryside Act 1949. The Council may request landowners to remove any misleading signs or notices. Failure to do so may result in the Council taking direct action and/or prosecution. All reasonable costs may also be reclaimed when possible.

*Highways Act 1980 section 132 & National Parks and Access to the Countryside Act 1949 section 57
Road Traffic Regulation Act 1984 section 69*

2.4. Obstructions and Encroachment

The Council has a duty under *statute law* to remove all obstructions and encroachments to PRow. It has various powers under the Highways Act 1980 to serve notice on persons responsible for obstructions and to take other enforcement action.

A landowner, who wishes to erect a new item of furniture across a Public Right of Way for the purpose of controlling the ingress and egress of livestock, must first of all apply to the Council for authorisation under Section 147, Highways Act 1980. The Council will adopt the "least restrictive option", i.e. gap, gate, stile when considering whether authorisation should be given after consultation with the Community Council and relevant user group(s). Any new unauthorised furniture may be dealt with as an obstruction.

The Council also has a *common law* right to remove anything that it believes constitutes an obstruction, or encroachment on the public highway without consultation with any other party.

Highways Act 1980 section 130

Land managers be notified of their obligations as soon as any obstruction is identified. Should they fail in their duty appropriate enforcement action may be taken and consideration may be given to prosecute repeat offenders. All reasonable costs may also be reclaimed. (Obstructions include unauthorised furniture).

If it is demonstrated to the Council's satisfaction that encroachment has occurred, but it is not materially affecting the path or the rights of users, the Council may consider this as *de minimis* with no further action required. However, the persons responsible will be warned of the position and the consequences of any further encroachment.

[Highways Act sections 137 & 137ZA, 143, 148\(c\), 149.](#)

2.5. Hedges and trees adjacent to Public Rights of Way

The Council will ensure that landowners and occupiers adjacent to any public rights of way meet their responsibilities under Section 136 and 154 of the Highways Act 1980. Failure to do so may result in the Council taking action to remove overhanging vegetation, or to secure its removal by the landowner. Where formal notice is served all reasonable costs may also be reclaimed.

The recommended minimum clearance from the ground for a footpath is 2.5 metres and 3.5 metres for a bridleway.

[Highways Act 1980 section 136 & 154](#)

2.6. Maintenance of stiles and gates

It is the duty of the landowner to ensure that any stiles and gates are kept in a good state of repair. The Council's duty only extends to ensuring that the landowner complies with this obligation and to provide a grant of 25% towards repairing or replacing such structures. The Council has a power to provide a discretionary grant, which will normally be as detailed below:

[Highways Act 1980 s 146,147](#)

- Category 1.** There shall be a presumption that Gwynedd Council will undertake 100% of the cost of the works required to *maintain* or *replace* (only) existing furniture after consultation with the landowner, but the landowner remains legally responsible for the work. There shall be a presumption against requests for *additional* furniture being granted, which shall in any event be wholly funded by the landowner. No additional stile or other restrictive furniture will normally be permitted.
- Category 2.** There shall be a presumption that Gwynedd Council will undertake 100% of the cost of the works required to *maintain* or *replace* (only) existing furniture after consultation with the landowner, but the landowner remains legally responsible for the work. There shall be a presumption against requests for additional furniture being granted, which shall in any event be wholly funded by the landowner. No additional stiles or other restrictive furniture will normally be permitted, except in exceptional circumstances.
- Category 3 & 4.** For existing furniture, Gwynedd Council will normally supply materials to landowners free of charge for them to erect at their own expense, but officers may elect to arrange erection as well, dependant upon circumstances. No furniture more restrictive than employed hitherto will be permitted. In the case of requests for additional furniture, the least restrictive means of access may be authorised and wholly funded by the landowner, with the presumption that ladder stiles shall only be used where no other solution is practicable, and in exceptional circumstances only.

When considering the replacement or installation of new gates and stiles, Gwynedd Council will seek the least restrictive option in accordance with BS 5709:2006 of gap, then gate, then stile; replacement furniture of a more restrictive character will not be permitted. Where the Council requests a less restrictive option it will seek to meet any extra costs involved (e.g. where a kissing-gate is installed to replace a stile) either from internal or external funding sources.

Highways Act 1980 s145 & 175A (inserted by Disabled Persons Act 1981)

In order to preserve the character of the area, masonry stiles will normally be maintained by Gwynedd Council but in order to improve access, subject to landowner approval, a gate may be provided in addition or as a replacement. Masonry stiles will only be maintained on Category 3 & 4 paths if the path otherwise is clear of obstructions and other issues and complaints are received.

Circumstances for which the Council can give authorisation for the erection of new stiles/ gates is that the structures are required for stock control purposes, (Section 147 HA 1980). Barriers can also be maintained by the Council under Sections 115B & 66 Highways Act 1980 (as amended by Section 70 CRow Act 2000).

Highways Act 1980 sections 66 (as amended by the CRow Act 2000 section 70) 115b & 147.

The Council reserves the right to withdraw the discretionary grant from landowners who fail to co-operate, or are obstructing other PRow.

Highways Act 1980 s146

2.7. Ploughing and Cropping

The Rights of Way Act 1990, states that landowners or occupiers must not plough or disturb the surface of a footpath or bridleway that runs along a field edge. They must also avoid ploughing a cross field path where possible. Gwynedd Council will comply with Section 134 & Section 137A Highways Act 1980. Where a footpath or bridleway is ploughed, it must be reinstated within 14 days beginning from when the surface is first disturbed, and 24 hours for any further disturbance such as harrowing and drilling. No ploughing or disturbance to the surface of a Byway Open to All Traffic, Restricted Byway or Road is permissible under any circumstances.

Where a crop (other than grass) has been planted or sown on land crossed by a footpath or bridleway and renders it inconvenient, the occupier has a duty to ensure that the line on the ground of the public right of way is indicated to not less than the minimum width as shown below:

If the width of a way is proved e.g. by inclusion in the statement accompanying the Definitive Map, that width is the minimum width. If it is not proved, the minimum width is:

- cross field footpath 1.0m
- headland footpath 1.5m
- cross field bridleway 2m
- headland bridleway or carriageway (whether cross field or headland) 3 metres.

Additionally, the occupier has a duty to prevent the crop from encroaching within that width throughout the growing season.

The Council will normally take direct action to remove crops or to reinstate paths where landowners have failed in the duties imposed on them by Section 134 and Section 137A of the Highways Act 1980. The appropriate enforcement action contained in the Highways Act 1980 may be followed or the Council may take action under its *common law* powers. Consideration may also be given to prosecuting repeat offenders. All reasonable costs may also be reclaimed. If it is demonstrated to the Council's satisfaction that disturbance has occurred, but it is not materially affecting the path or the rights of users, and a convenient alternative route has been provided the Council may consider this as acceptable and take no further action.

[Highways Act 1980 section 134 & 137A](#)

2.8. Single Payment Scheme, Good Agricultural and Environmental Condition

All legal responsibilities relating to existing Public Rights of Way and land defined as open country under the provisions of the Countryside and Rights of Way Act 2000 must be complied with. All offences of non-compliance of obligations under The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulation 2004 - No.3280 (W284) and as amended, will be reported to Welsh Assembly Government. Articles 9 (a) and (e) of European Commission Regulation (EC) No 796/2004, expressly provide for the establishment of a system of effective control on cross compliance, which involves the "sharing of necessary information between the paying agencies and the competent control authorities."

['Single Payment Scheme Cross Compliance Handbook for England 2005 Edition' RPA & defra](#)

2.9. Bulls and dangerous animals

Land managers may be notified of their obligations under Wildlife and Countryside Act 1981 section 59, following any report.

In general bulls must not be kept in any field crossed by a Public Right of Way. Exceptions are:-

- 1) where they are under 10 months old
- 2) where they are not of a recognised dairy breed (recognised dairy breeds are Ayrshire, British Friesian, British Holstein, Dairy Shorthorn, Guernsey, Jersey & Kerry) and accompanied by cows or heifers.

Therefore any bull over the age of ten months is prohibited on its own, and any such bull which is of a recognised dairy breed.

Consideration may be given to prosecuting repeat offenders and reclaiming all reasonable costs.

[Wildlife and Countryside Act 1981 section 59](#)

The keeper of any animal, including horses and dogs, is strictly liable for damages if it injures another person.

[Animals Act 1971, section 2 & Health & Safety at Work Act 1974](#)

2.10. Intimidating dogs

It is an offence to keep a dangerous or intimidating dog on a public right of way. It may also be considered a 'public nuisance'. If it is out of control in a public place it is an offence under the Dangerous Dogs Act 1991.

The Council will request the landowner or occupier to take action so that the dog no longer deters members of the public from using the right of way and consider any further enforcement action that might be taken. The Council may also inform the police and will advise complainants to notify the police directly.

Public nuisance under common law and Dangerous Dogs Act 1991

2.11. Electric and barbed wire fences adjoining a Public Right of Way

If, in the opinion of the Council, any electric or barbed wire fence alongside a public right of way is a danger or nuisance, then the Council may ask the owner to make the fence safe for members of the public using the path. If the owner refuses or fails to do so, the Council may serve legal notice requiring the owner to remove the source of danger within a specified time; there is a right of appeal to the Magistrates Court. Failure to comply with the Notice may result in the Council taking Court proceedings.

As good practice and recommended by British Standards, landowners should make sure that no barbed wire or electric fence is within 1 metre of any authorised gate or stile (or within its normal manoeuvring space) to avoid possible claims for damages from users.

Highways Act 1980 sections 148(c) & 164 & Occupiers' Liability Act 1957

2.12. Firearms on Public Rights of Way

Following any report landowners and occupiers may be notified of their obligations under section 161 Highways Act 1980 and section 19 Firearms Act 1968 to ensure that no public nuisance occurs.

The Council may, where it is concerned for the safety of the public using the right of way, refer complaints to the police and consider whether any other enforcement action can be taken.

Highways Act 1980 section 161 and Firearms Act 1968 section 19.

2.13. Development

The Council consults on proposed developments and takes into account the presence of Public Rights of Way. The Council has issued a guide book "Development and Public Rights of Way", available upon request. The guidance given therein should be followed, failing which the Council may take appropriate enforcement action as described above.

2.14. Protection of Identity

The names and addresses of members of the public who report obstructions and other difficulties confidentially will not be revealed without the prior consent of the person concerned unless the Council is required to do so by law.

2.15. Future Developments

Gwynedd Council will keep its enforcement policy under regular review, making any alterations required due to changes in the law or that prove necessary in the light of experience.

Where the Council has a policy as outlined above it will consider in appropriate cases whether an exception should be made to it on its merits.

Appendix 1 – Path Categories

Category	
1	<p>Paths that facilitate people’s movement. These will usually already have significant usage or form connections within towns, villages or between public transport facilities, car parks, and pleasure attractions.</p> <p>Routes promoted by the Wales Assembly Government, Gwynedd Council, or the Health Authorities, together with well-used urban and inter-urban paths mostly with made or hard surfaces, including paths upgraded to “Access for All”. No stiles except in exceptional circumstances in very rural areas, where every effort will be made to eliminate them as soon as practicable.</p>
2	<p>Popular paths used mainly for pleasure including paths around communities, circular walks, access to beaches or promoted routes.</p> <p>Well worn paths without necessarily having a made surface, routes promoted by Community groups if not included in Category 1. Very few stiles, with a presumption that these will be changed to gates in time whenever practicable.</p>
3	<p>Paths, with only occasional use but whilst being less used, form significant connections between the paths in categories 1 and 2 or between communities where there is currently little to encourage walking. These may include potential links between communities.</p> <p>Lesser used paths which nevertheless form useful links or potential links.</p>
4	<p>Path with no obvious benefit or potential and where a reasonable convenient alternative route exists on higher category paths.</p> <p>Paths with known Definitive Map anomalies.</p> <p>Closely parallel routes, where these paths are the much less attractive option, or cul-de-sac paths with little or no future potential for forming practical connections to other access.</p>

Appendix 2 – General Procedure

In pursuing any enforcement case, the Council will follow a fair and reasonable process to try to remove the obstruction(s), with the aim of resolving the problem at the earliest possible stage. The following sequence of steps will be adopted:

i)	advice
ii)	written warning
iii)	enforcement notice
	a) with subsequent direct action to remove the obstruction and the recovery of all reasonable costs or, b) if this is not permissible by law go to steps iv) or v)
iv)	legal caution
v)	prosecution

The inspection of obstructions and the initial stages of advice and notification will follow an agreed stepped process as set out in Appendix 3.

The Council will issue an Official Legal Caution where the process of inspection and notification fails and the obstruction(s) remains. The Council will take no further action where the landowner agrees to such a caution and clears the obstruction(s). The Council will consider the use of prosecution powers where the landowner refuses the caution, and consideration as to whether this is in the public interest.

Proceedings for a prosecution will follow an agreed process as set out in Appendix 4.

Appendix 3 – Process for inspection and notification

1.	On identifying the obstruction the landowner or occupier of the land will normally be contacted verbally within 10 working days, <i>and given a period of between 5 and 28 days to remove the obstruction.</i>
2.	The notice period given to remove the obstruction will be commensurate with its nature and scale (<i>e.g. a locked gate would be required to be opened up within 5 days, whereas replacing/installing a new gate would be given 28 days</i>). Determination of this period of notice will be made in a fair and reasonable manner by the inspecting officer.
3.	The site may then be re-inspected within a further 10 days of the expiry of the notice period in question to see if the obstruction has been removed.
4.	If the obstruction is then cleared, a letter will be sent thanking the landowner or occupier of the land for their prompt action and seeking assurance it will not happen again.
5.	If the obstruction is not cleared, a letter together with a Legal Notice will be sent stating the nature of the offence and highlighting the time scale in which the obstruction must then be removed.
6.	Statutory Notices will give the minimum prescribed timescale for removal. However, discretion may be exercised, depending upon the nature of the obstruction, and stated in the covering letter following assessment by the Rights of Way Manager in consultation with the inspecting officer. A building or structure across the Public Right of Way for example would be given a greater period of time for removal than a lesser obstruction which could be removed quickly.
7.	Re-inspection will be undertaken as soon as practicable after the timescale determined for removing the obstruction.
8.	If the obstruction is cleared a letter will be sent to the landowner, as in action 4 above, and if not the matter will proceed to direct action and cost recovery from the Council or to legal caution and possible prosecution as in the procedure laid out in Appendix 4.

Appendix 4 – Process for Prosecution Procedures

1.	The Council may issue an Official Legal Caution served by the Rights of Way Manager where the process of inspection and notification fails and the obstruction(s) remains. Instructions may be given to consider the case for a prosecution, and a case file assembled containing documented copies of the action taken so far.
2.	The litigation lawyer will undertake a review of the file and law relating to the case. Potential offence(s) will be identified and reported to the client. The Rights of Way Manager will take legal advice as to whether to pursue the use of prosecution powers. If a prosecution proceeds then the following steps 3, 4, 5 and 6 will be taken.
3.	A letter will be sent to the potential defendant serving notice. Proofs of evidence will be taken from witnesses.
4.	Relevant information will be laid in the Magistrates' Court. A summons and evidence will be served on the defendant.
5.	Attending Court. If the defendant enters a plea of guilty the case will be disposed of by presentation of the facts, mitigation by defendant and decision on the penalty by the Magistrates. If a not guilty plea is entered the case will be adjourned to a Case Management Hearing when issues are disclosed between the parties, witnesses listed, time estimate agreed and trial date fixed.
6.	Trial. It is envisaged a one-day trial would be dealt with in-house and that counsel would be instructed for lengthy trials.

Procedure and Policy for Definitive Map Modification Orders

Introduction

This policy has been devised having regard to the Wildlife and Countryside Act 1981, in particular Section 53 and Schedule 14. Additional guidance is provided in the Welsh Office Circular 5/93.

Background

The Definitive Map and Statements (DMS) are an extremely important record of PRow. These records are held and maintained by Gwynedd Council's Rights of Way Section. The Statement, which accompanies the Definitive Map, may contain a description of the position and width of a path or any limitation or condition affecting the right of way. Together, they provide conclusive evidence as to the existence and status of the public right of way shown.

Under the provisions of the Wildlife and Countryside Act 1981, Gwynedd Council as Surveying Authority has a duty to keep the DMS under continuous review.

Continuous review, in essence, means that when evidence becomes available that there is an error, inaccuracy or omission on the DMS, that the DMS should be modified as soon as is reasonably practicable by means of a legal order (known as Definitive Map Modification Order [DMMO]).

Thus, a Surveying Authority can make a DMMO whenever it discovers new evidence which requires the map to be amended. But in addition to this, any person may apply to the Surveying Authority for a DMMO to be made. Landowners may, for example, believe that a path recorded on the Definitive Map is not public, or that a public right of way is shown on the incorrect line or has the wrong status. Likewise, there are often cases where paths not recorded on the Definitive Map actually exist on the ground, and may have been openly used and enjoyed by the public for a considerable time. In such cases there may be a basis for that route to be added to the legal record, if public rights have been established.

Whoever seeks a DMMO, the same basic principle applies. The most important of these is the need for factual evidence and whether or not public rights exist. There are two main types of evidence which applicants should seek when making an application – *evidence of use* and/or *documentary evidence* such as historical maps and records. Evidence will need to be well-founded and convincing – merely asserting that a right of way exists without supporting evidence is unlikely to result in an Order being made. The whole exercise is concerned with resolving uncertainty over what rights actually exist not what rights are desirable from any particular viewpoint. See Appendix 3 for a list of the type of evidence required.

In order to achieve the correct results, consistent with facts and legislation, officers investigating such claims undertake thorough and detailed research into the relevant evidence, in each case, making a substantial commitment in time and resources.

Although not stated explicitly, the legislation envisages that claims will be determined within 12 months. It does this by providing that an applicant may apply to the Planning Inspectorate for a direction requiring the local authority to determine a claim if it has not done so within 12 months of the date of receipt of the completed application. The Planning Inspectorate will have regard to the Council's policy for dealing with DMMO's in considering requests for direction.

Due to the complexity of researching such applications, this 12 month period is frequently exceeded. In addition, there is a backlog of Definitive Map and other legal order work facing the Council's Rights of Way Section. As a result, there are a number of applications which have been received but not yet determined a number of years after receipt.

A further material consideration is the Countryside and Rights of Way Act 2000 (CROW Act). In order to bring some certainty to users of the countryside and landowners about what rights actually exist, a cut-off date of 1st January, 2026 has been introduced, after which it will not be possible to apply for footpaths, bridleways or higher rights to be included on the Definitive Map based purely on historical documentary evidence (historical is classed as pre-1949). Thus after this date it will only be possible to claim rights based on user evidence. However, it is envisaged that the backlog will grow due to an anticipated increase in DMMO applications as 2026 approaches.

The Natural Environment and Rural Communities (NERC) Act 2006 extinguished every public right of way for mechanically propelled vehicles unless that way i) was already shown on a Definitive Map and Statement as a Byway Open to All Traffic (BOAT) or ii) was subject to one of a number of exemptions contained in Sections 67(2) or 67(3). One of these exceptions is if the right to use motorised vehicles had come into existence prior to 1930. Another would be if the main use in the period of 5 years before 11th May, 2006 was by motorised vehicles.

3.0 The Policy

3.1 Form of Application

In accordance with paragraphs 1 and 2 of Schedule 14 of the 1981 Act (see Appendix 1), all applications shall be made in the prescribed form and shall be accompanied by a map to a scale of not less than 1:25000 showing the way or ways to which the application relates.

It shall include copies of all documentary evidence (including statements of witnesses) which the applicant wishes to offer in support of the application, even if the documents are already in the possession of the Council.

The applicant shall serve notice on every owner and occupier of the land covered by the application. The notice shall state that the application has been made. If the applicant does not know the name and address of the owner or occupiers, he shall make reasonable inquiries. If the reasonable inquiries do not discover the name and address of the owner or occupiers, the applicant shall inform the Council of this fact and describe the inquiries made. At its discretion, the Council may allow the applicant to serve the notice by addressing it to "the Owner" or "the Occupier", as appropriate, and fixing it to a conspicuous object or objects on the land. When the notice has been given to the owner or occupier the applicant shall certify that to the Council in the prescribed form.

The Council will provide all the necessary documentation to enable an application to be made in the prescribed form.

The number of evidence statements which an applicant needs to submit is not specified in the relevant legislation, although Gwynedd Council generally regards 7 statements as being desirable.

The Council will not investigate the application until all these preliminary steps have been complied with. Any application that is not in the prescribed form with copies of supporting evidence, as set out in paragraphs 1 and 2 of Schedule 14, will normally be returned to the applicant with an explanation of its formal deficiencies.

3.2 Register of DMMO applications

Within 28 days of the receipt of a valid application, the Council will record the application on its register of DMMO claims which the Council is required to keep and maintain under Section 53B of the 1981 Act.

3.3 Priority for dealing with applications

The Council will determine a valid application as soon as possible and will endeavour to do so within 12 months of receiving it.

DMMO applications will normally be assessed by the PRow Section and priority given in accordance with the following criteria:

- (i) the good use of public resources
- (ii) the degree of public benefit
- (iii) obstruction of the route
- (iv) the likelihood of the land over which the route runs being developed
- (v) clarity of the evidence submitted
- (vi) where a substantial proportion of the user witnesses are elderly
- (vii) expediency in order to facilitate the resolution of rights of way
- (viii) the availability of nearby alternative routes which offer the user a similar or enhanced experience to the claimed route.

3.4 Consideration of the evidence

If an application meets the formal requirements but a brief investigation of the evidence accompanying it shows that there is no reasonable prospect of it succeeding on the evidence submitted then the application will normally be rejected with an explanation of the further evidence which would be required for it to be reconsidered.

Where there is incontrovertible evidence that the landowner had no intention during the claim period to dedicate the way to the public, for example by the landowner complying with Section 31(6) of the Highways Act 1980, then the decision should be that no right of way as claimed subsists and the application will thus be rejected.

If, however, an application has a reasonable prospect of succeeding on the basis of the evidence submitted, officers will investigate that evidence, together with all other relevant evidence available to the Authority.

In investigating the application, a preliminary consultation will be conducted with the Community/Town Council and other relevant organisations (e.g. Rambler's Association, Local Member).

A summary of the evidence contained in the application will be submitted to all “owners” or “occupiers” asking if they wish to make objections or any representations regarding the application. A reasonable time will be allowed for any such representations or objections to be made.

If user evidence is corroborated by other evidence, there may be no need for interviews to be undertaken by officers. However, if there is evidence casting doubt upon the user evidence (such as contradictory evidence from a landowner) then interviews of the landowner and a selection of user witnesses by an officer may be appropriate to determine whether the Authority should proceed with the application.

3.5 Determination of the application

Having considered all the evidence and representations made, a report will be prepared and submitted in accordance with the Council’s Rights of Way Delegation Scheme (see Appendix 2).

When the Council has determined the application, the applicant and the landowner or occupiers who were served with the Notice of Application will be notified of the decision.

If the Council decide to refuse the application and not to make any Order, the applicant has 28 days from service of the Notice of Decision to appeal to the Planning Inspectorate, who will appoint an Inspector to consider the appeal.

If, after 28 days, no appeal has been made, the file can be closed.

If the Council decide that a DMMO should be made, officers will, as soon as reasonably practicable, implement this decision.

3.6 Publication of DMMO

If the Council decide to grant an application, an Order will be made and published in a local newspaper and posted on site. The owners and occupiers of land affected and the Community/Town Council will also be served with a copy of the Order. There will be a period of not less than 42 days for representations and objections to be made.

If there are no such representations and objections the Council will confirm the Order. If there are representations or objections or any amendment to the Order is necessary then the matter will be referred to the Planning Inspectorate who will appoint an Inspector to consider the issues and evidence in the form of written submissions or a public inquiry. He may then confirm the Order with or without alterations to it.

The Council will inform the applicant whether or not the application can be confirmed.

When an Order is confirmed, a Notice will be published in a local newspaper and posted on site and all interested parties will be notified. Any person aggrieved by the confirmation of an Order may question its validity in the High Court within 42 days of the notification. The grounds for such an application must be that the Order is not within the powers of the 1981 Act or that the Act has not been complied with. The High Court may quash an Order in whole or in part if it is satisfied that this is the case.

If the Modification Order is confirmed and not quashed by the High Court, it will become part of the DMS for the area and read with it as one document. A separate Legal Event Order (LEO) is required to effect a change on the Definitive Map and Statement. This will be undertaken by the Council at its own expense. The Ordnance Survey is automatically provided with a copy of the Order so that they can take the changes into account on the next edition of their relevant maps.

Other than signposting and waymarking there will normally be little effect on the ground. There will be no change in landownership and the Authority is not obliged to accept any liability for maintenance. If, however, the route is obstructed, steps will be taken to remove the obstruction.

3.7 Guidance

The Council has produced guidance notes to assist applicants which will be provided free of charge to anyone who seeks to make an application to modify the DMS.

The guidance notes are also available on the Council's website.

The Council recognises that the procedures set out in the policy may need to be amended in the light of experience and any subsequent representations that might be received following its implementation. The policy will be updated periodically to reflect current judicial decisions.

Where the Council has a policy as outlined above it will consider in appropriate cases whether an exception should be made on its merits.

Appendix 1

WILDLIFE AND COUNTRYSIDE ACT 1981

SCHEDULE 14 APPLICATIONS FOR CERTAIN ORDERS UNDER PART III

Form of applications

- 1 An application shall be made in the prescribed form and shall be accompanied by —
- (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
 - (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

Notice of applications

- 2(1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates.
- 2(2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be served on him by sub-paragraph (1) may be served by addressing it to him by the description “owner” or “occupier” of the land (describing it) and by affixing it to some conspicuous object or objects on the land.
- 2(3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.
- 2(4) Every notice or certificate under this paragraph shall be in the prescribed form.

Determination by authority

- 3(1) As soon as reasonably practicable after receiving a certificate under paragraph 2(3), the authority shall—
- (a) investigate the matters stated in the application; and
 - (b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the Order to which the application relates.
- 3(2) If the authority have not determined the application within twelve months of their receiving a certificate under paragraph 2(3), then, on the applicant making representations to the Secretary of State, the Secretary of State may, after consulting with the authority, direct the authority to determine the application before the expiration of such period as may be specified in the direction.
- 3(3) As soon as practicable after determining the application, the authority shall give notice of their decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1).

Appeal against a decision not to make an Order

- 4(1) Where the authority decide not to make an Order, the applicant may, at any time within 28 days after service on him of notice of the decision, serve notice of appeal against that decision on the Secretary of State and the authority.
- 4(2) If on considering the appeal the Secretary of State considers that an Order should be made, he shall give to the authority such directions as appear to him necessary for the purpose.

Appendix 2

GWYNEDD RIGHTS OF WAY DELEGATION SCHEME

All functions relating to rights of way as contained within the following Acts as amended and including all subordinate legislation are delegated to the Head of Regulatory Department (Planning, Transportation and Public Protection):

- National Parks and Access to Countryside Act 1949;
- Countryside Act 1968;
- Highways Act 1980;
- Wildlife and Countryside Act 1981;
- Road Traffic Regulation Act 1984;
- Cycle Tracks Act 1984;
- Countryside and Rights of Way Act 2000;
- Clean Neighbourhoods and Environment Act 2005 (gating Orders)
- Natural Environment and Rural Communities Act 2006 – part 6

NB The above provides that *the determination of all applications with regard to, and decisions to confirm, rights of way Orders are delegated to the Head of Regulatory Department (Planning, Transportation and Public Protection) with the exception of the following:*

- i Applications submitted by serving Members or staff of the Regulatory Department.
- ii Applications involving land owned by the Council.
- iii Decisions to submit Orders made under the Highways Act 1980, where objections are received to the Order and are not withdrawn, to the National Assembly for confirmation
- iv Applications which the Head of the Regulatory Department (Planning, Transportation and Public Protection) considers should be referred to Committee.
- v Applications for Orders made under the Highways Act 1980 where the Councillor in whose ward a proposed Order is located submits a written request to the Head of the Regulatory Department (Planning, Transportation and Public Protection) within the established time scale for consultation that the matter should be decided by the Area Committee. The prescribed period for notification shall be 16 calendar days from the date of the letter of consultation regarding the proposal.

Appendix 3

Evidence Required – Documentary

An Inspector conducting a Public Inquiry to determine whether a Public Right of Way has been established over land, will expect the following to have been researched and copies supplied (where relevant) as a matter of course:

Mapping, ranging from First Edition Ordnance Survey (c.1835) to the latest relevant edition, including both large and small scale mapping

Old County and private maps

Tithe Map and Schedule

Enclosure Awards and Schedule

1910 Finance Act maps and Schedule

Relevant private Bills or Acts of Parliament or Orders (e.g. railway) plans and schedules.

Relevant Guide books, maps and leaflets

Relevant copies of County, District and Parish or Community Council minutes

Title deeds

Court Judgements

Dated photographs

Relevant correspondence (e.g. between landowners and tenants or alleged trespassers)

Any other documentary evidence that may exist which is relevant to the matter

User Evidence

An Inspector will normally expect to be able to question those supplying user evidence and for those people to be subject to cross-examination. Evidence not subject to this test may be discarded or degraded.

Statements on prescribed forms

Sworn Affidavits

Relevant, dated photographs or other media

Recordings of interviews with users

Note: Failure to produce as much relevant evidence as is applicable in each case, may seriously delay consideration and determination of any application. It is therefore in the applicant's interest to make the best case possible in order to achieve a speedy and successful outcome.

Procedure and Policy for Public Path Diversion and Extinguishment Orders

4.0 Introduction

This policy has been devised having regard to the Highways Act 1980, in particular Public Path Orders (PPO's) made under Sections 118 and 119. This policy does not cover Creation Agreements and Orders made under Sections 25 and 26 respectively, nor does it cover the use of Section 116 through the Magistrates Court.

If a path needs to be diverted or extinguished for development to take place, a legal order must be made under the Town and Country Planning Act 1990 before development is completed. This policy document does not apply in these cases.

4.1 Background

Under Section 118 of the Highways Act 1980, any person may make an application to the Highway Authority to extinguish a footpath, bridleway or restricted byway on the grounds that it is not needed for public use.

In accordance with the provisions of Section 119 of the Highways Act 1980, any person may make an application to the Highway Authority to divert a footpath, bridleway or restricted byway where such proposals are in the interests of the owner, occupier or lessee of the land over which the right of way runs with or without an interest to the public at large.

Other legislation makes provision for diversions and extinguishments of rights of way in a number of additional circumstances e.g. for the protection of schools, for the purposes of crime prevention in certain areas, to protect Sites of Special Scientific Interest (SSSI's) or in the interest of public safety where rights of way cross railway lines. Such provisions are listed in Appendix 1.

It should be noted that path diversions and extinguishments are *powers* of the Highway Authority and not a *statutory duty*. However, applicants may have a right to apply for some types of applications.

It should be noted that proposals for path diversions must have regard to the needs of the mobility of disabled or blind persons who may use the path.

It should be noted that the Council does not generally support applications for Extinguishment Orders unless they are part of a wider package with compensating public benefit. The Council will accept stand-alone applications for extinguishments only in exceptional circumstances.

4.2 Application criteria

It is essential that any application meets the legislative/application criteria prior to being submitted. Applicants are strongly advised to discuss their case with the Area Rights of Way Officer in the first instance. The Council will only exercise its discretion to make an Order if it is satisfied that the Order is capable of being confirmed (i.e. it believes the legislative tests are met).

The legislative tests that a particular application must meet depend upon the type of Order being sought (see Appendix 1).

The Council has produced a set of guidance notes in relation to diversions which can be supplied free of charge to any potential applicant. The guidance notes expand on and are in addition to the tests set out in the legislation. These notes are provided in Appendix 2 of this policy.

It is highly recommended that applicants pay particular attention to these guidance notes prior to submitting an application.

The existing route must be clear of obstructions prior to any application being submitted, and clear of obstructions until the Order is confirmed and the new route is available for use (this requirement may be waived in circumstances when a route is obstructed by a significant and/or historic obstruction, e.g. a building or expanse of water).

It should be noted that it is unlawful under both common law and statute law for any person, without lawful authority or excuse, in any way to wilfully obstruct the free passage along a highway.

4.3 Making an application

Applicants for path diversions or extinguishments will be given the relevant application form to complete.

As part of the application, the applicant is required to submit two plans illustrating the proposal and landownership details. Plans may be supplied by the Council upon request.

Written consent must be obtained from all landowners and occupiers who will be affected by a proposed diversion. A copy of the consent must be submitted with the application.

Applicants for both diversions and extinguishments will be expected to:-

- agree in writing to meet administrative costs associated with making the Order (as per fee structure – see Appendix 3) and the actual cost of advertising the Diversion Order in the local press;
- agree in writing to pay any compensation which becomes payable in consequence of the coming into operation of the Order;
- agree in writing to pay all costs to set out any new line of the path on the ground;

All applications must be accompanied with an advanced, non-returnable payment of (£200) towards these costs.

The Council will not commence the procedures until all these preliminary steps have been complied with. Any incomplete application will normally be returned to the applicant with an explanation of its deficiencies.

It should be noted that the administrative and advertising costs incurred are payable whether the Order is successful or not.

In cases where, in the opinion of the Council's Rights of Way Section, there is significant public benefit, consideration will be given to waive all or part of the costs associated with the processing of an application for a PPO.

Where the Council instigates an Order, the relevant department/section will meet the costs of processing the application.

4.4 Priority for dealing with applications

Applications will normally be dealt with in chronological order of receipt. However, the Council reserves the right to prioritise some applications out of sequence where other criteria are relevant. Examples of such relevant criteria may include:-

- The avoidance of imminent danger to the public where other remedial health and safety action is not appropriate.
- The opening up of a path blocked by a long term obstruction.
- The moving of a path to materially increase public enjoyment (for example, by providing better views or opportunities to observe wildlife or to avoid permanent water logging).
- The removal of a real sense of invasion of privacy for the public (not just a perceived one by the applicant) where this is a serious deterrent to use which it has not been possible to overcome through clear signing and way marking.
- The opening up of the network by the provision of an important link to the rest of the network not provided by the existing path.

4.5 Determining the application

Upon receipt of a valid application, a site visit will usually be arranged by the Rights of Way Officer. The site meeting is an ideal opportunity to view the definitive line of the Right of Way and consider the proposal. The Officer will usually give advice about the suitability of the proposal, statutory requirements and whether or not the applicant will be required to do any works on the ground for example to bring a diverted route up to a suitable standard.

The Officer cannot make the decision whether or not to make a Diversion or Extinguishment Order, but they can advise on the likelihood of its success.

Following the visit, the Rights of Way Officer will form a preliminary judgement as to whether the application satisfies the criteria contained within the relevant legislation.

If the Rights of Way Officer is satisfied that the application meets the relevant criteria, the Council will undertake a preliminary consultation with the relevant Community or Town Council, the Snowdonia National Park Authority (where applicable), landowners, interest groups and Statutory Undertakers. This, it is hoped, will encourage better dialogue between all interested parties and the Authority and also help to minimise the risk of objections if an Order is made. In addition to the above consultation, the officer will consult with the Local Member for the area.

However, if after carrying out the preliminary consultation, objections are received, then officers will either:-

- a) Enter into discussions with the objector(s) in an attempt to resolve the objections and/or have the objection(s) withdrawn, and/or

- b) Enter into discussion with the applicant in an attempt to find a more acceptable route for the proposed diversion.

If, after the additional consultations, it is not possible to resolve the objection(s) or have them withdrawn and the applicant cannot or will not provide an alternative route, then a report will be prepared and submitted in accordance with the Council's Rights of Way Delegation Scheme (see Appendix 4).

4.6 Making and publishing the Order

If the Council decides that a PPO should be made, the Rights of Way Officer will, as soon as reasonably practicable, implement this decision.

The Order will be advertised in a local newspaper and at the relevant points on site, with a copy of the Order sent to the applicant, occupier of the land, Community or Town Council and other prescribed bodies specified in the Welsh Office Circular 5/93.

If no objections are received within 28 days, or any that are received are subsequently withdrawn, the Council will confirm the Order.

If any objections are made, they may be copied to the applicant, so that the applicant may, if he wishes, negotiate with the objectors with a view to resolving the objections.

If any objections are received and are not subsequently withdrawn, the Council cannot confirm the Order, but will refer it to its Area Committee who will determine whether or not to refer the Order to the Planning Inspectorate for determination. In such cases, the Order will be determined by written representation, a hearing or a Public Inquiry.

The Council will inform the applicant whether or not the application can be confirmed.

When an Order is confirmed, a Notice will be published in a local newspaper and posted on site and all interested parties will be notified. Any person aggrieved by the confirmation of an Order may question its validity in the High Court within 42 days of the notification. The grounds for such an application must be that the Order is not within the powers of the Highways Act 1980 or that the Act has not been complied with. The High Court may quash an Order in whole or in part if it is satisfied that this is the case.

If the Council has specified that physical works are required in order to bring the new route up to a suitable standard, such work must be completed before the Order comes into force. The work will be inspected and if satisfactory, certified by an officer from the Rights of Way Section.

If the works are not satisfactorily completed, the Council may undertake the work itself and recover the cost of doing so from the applicant.

After the work has been completed and the Order has come into force, the applicant will be invoiced for any outstanding costs. The new route will be signposted (where applicable) where it leaves a maintained highway, and "Diversion" signs will be placed at the points where the public will encounter the old (closed) route, directing them to the new route. These signs are to remain in position for a minimum of 5 years to inform path users before Ordnance Survey maps are amended, and those using older edition maps.

The result of a PPO is to change a route on the ground. A separate Legal Event Order (LEO) is required to effect a change on the Definitive Map and Statement. This will be undertaken by the Council at its own expense. The Ordnance Survey is automatically provided with a copy of the Order so that they can take the changes into account on the next edition of their relevant maps.

Appendix 1

Legislative Tests

The legislative test that a particular application must meet depends upon the type of Order being sought. This policy applies to the following types of Order:

- **Public Path Extinguishment Order - Section 118 Highways Act 1980:** A right of way may be extinguished where it is not needed for public use.
- **Public Path Diversion Order - Section 119 Highways Act 1980:** A right of way may be diverted where it can be shown that it is in the interest of the relevant landowner and/or the public to do so, but only where:
 - i) the diverted route would not be substantially less convenient to the public; and
 - ii) the diversion would not alter any point of termination of the path, other than to another point on the same highway, or a connected highway.The effect the diversion would have on public enjoyment of the path as a whole must also be taken into account before a decision is made.
- **Rail Crossing Extinguishment / Diversion Order - Section 118A / 119A Highways Act 1980:** A right of way which crosses a railway may be extinguished (Section 118A) or diverted (Section 119A) where it can be shown that it is expedient to do so in the interests of public safety, but only if it is not possible to make the crossing safe.
- **Special Extinguishment / Diversion Order - Section 118B / 119B Highways Act 1980:** Extinguishments (118B) or diversion (119B) of certain highways for the purposes of crime prevention in designated areas.
- **Special Extinguishment / Diversion Order – Section 118C / 119C Highways Act 1980:** Certain highways may be extinguished (Section 118C) or diverted (Section 119C) for reasons of school security {for the purpose of protecting pupils and staff from violence; threat of violence; harassment; alarm or distress arising from unlawful activity; any other risk to their health and safety arising from such activity}.
- **SSSI Diversion Order - Section 119D Highways Act 1980:** A right of way may be diverted in order to protect a Site of Special Scientific Interest.
- **Section 118ZA / 119ZA Highways Act 1980:** Extinguishment (118ZA) or diversion (119ZA) of paths made in the interest of owners, lessees or occupiers of land used for agriculture, forestry or the breeding or keeping of horses.

Appendix 2

Part I - The Process

The route of a public right of way should not be moved unless the change has first been authorised by a legal order, known as a diversion order. This guidance explains how to apply to Gwynedd Council for permission to move a footpath, bridleway or restricted byway. Different rules apply to the diversion of a byway open to all traffic.

When can a path be diverted?

A diversion will only be granted if the proposal meets certain requirements, which are set out in the Highways Act 1980. The proposed diversion must be in the interests of the owner, occupier, or lessee of the land crossed by the right of way, or in the interests of the public and the new route must not be substantially less convenient to the public. Above all, it must be expedient to have the diversion. In deciding whether it is expedient, we will take into account the public's enjoyment of the whole path and the effect of the diversion on other land. The Snowdonia National Park also has power to divert paths to enable development to take place within their area.

We can also make diversion orders to improve school security and to reduce crime, but we would like these to be discussed with us before an application is made, as different considerations apply.

Who can apply?

Anyone can apply for a diversion, but we would be most unlikely to agree to a diversion without the consent of the owners and occupiers of the land crossed by the old and new routes, and evidence of that consent will be required with the application.

How long does it take?

We hope to make our decision on an application within six months (it takes this long because we need time to consult others about the proposal). Even where we agree to make an order, it will take at least a further six months before the legal processes are complete. If the order is contested, it can take considerably longer. Remember, this work is a *power* and not a *duty* and is therefore subject to the Unit's workload at the time of the application, and the staff resources available to it.

What does it cost?

The diversion cannot be completed until the new path is put into good condition. We will specify any work that needs to be done before we make a diversion order but, if the diversion proceeds, the applicant must carry out the work, to our satisfaction, at his own expense. We have the power to do the necessary work and recover the cost from the applicant if he fails to do so.

We charge the applicant for the time we spend processing an application before an order is made as listed below and for the actual cost of advertising the diversion in the local press (approximately £1,000, depending on the length of the advertisement and the newspaper concerned).

Current fee structure

An applicant may be required to pay compensation to anyone whose land is devalued as a result of the diversion.

We can require an applicant to enter into an agreement with us to pay these costs and expenses.

Who decides whether a path should be diverted?

Initially, we do. The case officer will make a recommendation to the Council under the Delegation scheme who will decide whether or not a diversion order should be made. However, the making of an order is a public process, and if we receive objections to the order we may decline to take the matter further, or we may refer it to the Secretary of State for a decision. This may result in a public inquiry, or hearing, or be dealt with by way of written representations.

Please note that we do not have to make a diversion order, even if it complies with the requirements of the legislation. We hope that, by providing advice in Part II of this guidance, applicants will be encouraged to propose diversions which improve the network, or offer the public better access opportunities. We reserve the right not to agree to diversions that do not do so. We will, however, consider all applications and give reasons for our decision.

First steps

Applicants are strongly advised to discuss their case with the Rights of Way Office in the first case.

1. We recommend that anyone thinking of moving a public right of way first finds out the correct, legal line of the path (this may not be exactly how the path is used in practice). The most up to date information about the rights of way network is available at our offices in Caernarfon, Pwllheli and Dolgellau. Each public right of way is uniquely referenced by the name of the Community in which it is located, and a number. We will need this information to process an application.
2. The proposed new line of the path should be planned using the Part II guidance. We can provide informal advice at this stage in order that an application has the best possible chance of success. We can also advise at an early stage if the proposal is unlikely to succeed. The initial contact is the Senior Rights of Way Officer for the appropriate Area.
3. It makes sense to consult with local residents and users of the route before submitting a formal proposal to the Council, so that their views can be canvassed at an early stage, thereby reducing the chances of objections after the application fee has been paid.
4. Erect a notice beside the section to be diverted, explaining the proposed diversion and seeking comments and suggestions from those who use the route. Include a large scale plan showing the current rights of way network in the area (we may be able to assist in this respect).
5. Contact local representatives of interest user groups and ask for their input. We will be able to supply contact details for representatives of the Ramblers' Association, the Open Spaces Society and the Community Council, and also the British Horse Society and Cyclists Touring Club (in the case of bridleways) and the British Driving Society (in the case of restricted byways).

The application

We will provide copies of the application form, which should be sent to us once the proposal has been finalised, together with a map showing the proposed diversion.

Part II - Choosing a new route

This part of the guidance is intended to help applicants promote a diversion which provides the best possible alternative route for public use and an application which is, therefore, more likely to be approved. It is also intended to discourage the making of applications that stand little or no prospect of success.

We recognise that the needs and aspirations of the users of a path need to be taken into account when a path is diverted as well as those of the land owner and/or manager. We will consider both and we will also have regard to our Rights of Way Improvement Plan, which informs the way in which we manage the network of public rights of way. These are the result of research and consultation with local residents, access user groups, farmers and land managers.

We recognise that different users have different needs and not everyone using the rights of way network will agree on the qualities which make it special. We have consulted a number of people and organisations with different interests and have sought to draw out the most obvious issues of concern. The guidance is not intended to be prescriptive, because the overall quality of an application will be a combination of many different factors. These might include:

- the quality of the user's experience of the existing route and the proposed new route, in terms of surface, gradient and views,
- the importance of the path in the network,
- the nature of the terrain,
- local needs and opportunities, and
- the level and ease of future maintenance.

Our recommendations on widths, for example, are for guidance only, because the provision of a path at our suggested width does not guarantee that the application will be looked on favourably, any more than non-compliance means that application will necessarily be unsuccessful. We are suggesting that new footpaths should be at least 2 metres wide, because this width provides for ease of use and makes the path more accessible for machinery used for cutting. However, if there are good practical, or land management, reasons why the width should be less the diversion may nonetheless be acceptable. We want to encourage easier access to the countryside for all, so we will look more favourably on a new route that has no gates or stiles than on one which affords less accessibility. However, we also recognise that there are reasons why structures may be necessary to manage land properly, so a new path which includes such gates or structures may still be approved. Our guidance should be read in this spirit.

1. Accessibility to users and for maintenance purposes

Structures

- We like routes without gates, stiles, or other structures
- We don't like routes with structures unless these are necessary to prohibit unauthorised use or to control livestock. If a structure is needed to prevent unauthorised use, where possible a gap should be left at the side for pedestrian (and, where necessary, equestrian) access. Structures needed for the control of livestock may be authorised under S.147 Highways Act 1980.
- We don't like stiles.
- We would like you to discuss with us the specification of any structures before submitting your application. Bridleway gates need to have a minimum 1.5metre (5 feet) clear opening, have an easy to use latch and should be double-opening where possible. We would like to see Radar gates and medium mobility gates where improvements to accessibility are needed or desirable.
- We like structures on bridleways at junctions with roads to be sited sufficiently far back from the road junction to provide an area for riders and cyclists to wait safely before crossing.

Width

- We don't like new paths to be narrower than the paths they replace.
- We like paths to be wide enough for people to use easily and for machine access should surface cutting be necessary, ideally a minimum of 2 metres for a footpath and 3 metres for a bridleway but, generally, the wider the path the better.
- We don't like to find that diverted paths are subsequent narrowed by fencing or hedges, so if a path is to be enclosed at least an additional 0.5 metres (18 inches) of width should be offered.

Quality of surface

- We don't like new paths to have a surface which is less durable than the old, or which costs more to maintain. Drainage of the new path is an important matter to consider, as is the ability of the path to dry out after wet weather. The surface of a brand new path across open land may not be as durable as the surface of a path that has been compacted as a result of having been trodden for centuries, so the new path may need to be drained or engineered before it is of a similar standard.
- We like new paths with improved durability, consistent with their character and situation. We will advise on the required standard of construction of a new path. This will vary accordingly to its location and future use. For example, if the diversion means that the path is likely to be used more after the diversion than before, we may require the new path to be constructed to a higher standard than the old.
- We don't like new paths to use private access points where livestock congregate or where surface damage can be caused by farm machinery.
- We don't like new paths to require regular maintenance where this is not necessary on the rest of the path. Consider allowing sheep to continue grazing the area of the new path while excluding cattle and horses from it.

Quality of experience

- We like paths which offer the user a similar, or enhanced, experience to the path diverted, in terms of character, views, gradient and convenience of use.
- We don't like a significant increase in length, unless this is justified where it offers an improved experience or a link to a network not as conveniently accessible on the existing network.
- We don't like paths which take the user away from points of interest, such as views, historic features, or water unless an equivalent feature is available on the new route.
- We like diversions which reduce potential hazards for the user, such as taking users off a busy road, or away from land used by plant and machinery.
- We like paths which are safer for users, such as those with improved sight lines at road crossings and without blind corners or hiding places.
- We like paths which take a route that is easy for the users to follow without excessive signing and way marking.

Strategic value

- We like diversion proposals which provide improvements in connectivity to other parts of the rights of way network or to an area or areas of public access.
- We don't like diversions that do the opposite.
- We like diversions which offer network improvements better than those which do not. All diversion proposals should meet the standards relevant to highways of that type.
- We like diversions which offer additional rights for non-motorised users. If a new footpath is suitable and appropriate for use by horse riders and cyclists, we will welcome the dedication of additional rights for those users.

We reserve the right not to process an application for diversion if rights of way on land owned by the landowner are not fit for use as a result of any default on the part of the owner or occupier of the land.

We will not make or confirm an order if we do not consider it expedient to do so. In deciding whether or not it is expedient, we may take into account the cost of promoting an order once made, and the prospective benefit afforded to the public by the new route.

Appendix 3

Public Footpath Order Costs



Gwynedd Council
Public Footpath Order Costs

1.	Fee to be submitted with application	£433.34	
2.	Order made	£542.20	
3.	Order confirmed without objection	£1,203.73	
4.	Order opposed, applicant withdraws application	£962.98	
5.	Order Opposed, Authority decides not to proceed	£1,179.64	
6.	Opposed Order, Authority proceeds to Public Inquiry and order continued	£4,429.69	
7.	Order Opposed, Authority proceeds to Public Inquiry and application is refused	£3,767.12	
8.	In addition to the above fees the applicant is also responsible for paying advertising fees which are subject to costs at local papers (see below)		
	2 above:	1 advert	Recover cost
	3, 4 and 5 above:	2 adverts	Recover cost
	6 and 7 above	:3 adverts	Recover cost

Appendix 4

GWYNEDD RIGHTS OF WAY DELEGATION SCHEME

All functions relating to rights of way as contained within the following Acts as amended and including all subordinate legislation are delegated to the Head of Regulatory Department (Planning, Transportation and Public Protection):

- National Parks and Access to Countryside Act 1949;
- Countryside Act 1968;
- Highways Act 1980;
- Wildlife and Countryside Act 1981;
- Road Traffic Regulation Act 1984;
- Cycle Tracks Act 1984;
- Countryside and Rights of Way Act 2000;
- Clean Neighbourhoods and Environment Act 2005 (gating Orders)
- Natural Environment and Rural Communities Act 2006 – part 6

NB The above provides that *the determination of all applications with regard to, and decisions to confirm, rights of way Orders are delegated to the Head of Regulatory Department (Planning, Transportation and Public Protection) with the exception of the following:*

- i Applications submitted by serving Members or staff of the Regulatory Department.
- ii Applications involving land owned by the Council.
- iii Decisions to submit Orders made under the Highways Act 1980, where objections are received to the Order and are not withdrawn, to the National Assembly for confirmation
- iv Applications which the Head of the Regulatory Department (Planning, Transportation and Public Protection) considers should be referred to Committee.
- v Applications for Orders made under the Highways Act 1980 where the Councillor in whose ward a proposed Order is located submits a written request to the Head of the Regulatory Department (Planning, Transportation and Public Protection) within the established time scale for consultation that the matter should be decided by the Area Committee. The prescribed period for notification shall be 16 calendar days from the date of the letter of consultation regarding the proposal.

