



Countryside Access Team

Ploughing and Cropping Policy:

Legislation and Procedure



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Nothing in this Policy should be construed as limiting or preventing the implementation of any proportionate and reasonable enforcement action or legal proceedings which the Council considers is appropriate to take in any particular case where a public right of way is wilfully obstructed.

1 Introduction

- 1.1 The requirement that public rights of way are available for public use is a general duty of both the landowner¹ and this Council². Where public rights of way are obstructed the Council has a duty to protect the public's right to use the path or way and, where necessary, to seek³ the removal of the obstruction.
- 1.2 Sections 134 and 137A of the Highways Act 1980 imposes a duty on farmers to ensure that public rights of way are reinstated and clearly delineated after ploughing activities and are kept free of crops so that members of the public can use the paths.

2 Aim of the Ploughing and Cropping Policy

- 2.1 To ensure the Council fulfils its duty under section 130 of the Highways Act 1980.
- 2.2 To increase non-prompted compliance with the requirements of the Rights of Way Act 1990 by landowners.
- 2.3 To ensure that farming practice with regards to public rights of way meets the requirements of Central Bedfordshire Council policies and Defra's Rural Payments Agency.
- 2.4 To reduce the time between reporting or discovery of an offence and its resolution.
- 2.5 To enable Officers' time to be more efficiently and effectively used during Ploughing & Cropping Campaigns.

¹ Highways Act 1980, Section 137 *and other sections*

² Highways Act 1980, Section 130.

³ Central Bedfordshire Council may decide not to seek the removal of an obstruction in circumstances where doing so could expose members of the public using the path to other clearly identified hazards.



3 General principles of the Ploughing & Cropping Policy

- 3.1 The policy is based on a biannual campaign based around a Countryside Access Team newsletter, targeted mailings, and targeted inspections.
- 3.2 Area Rights of Way Officers should aim to inspect all priority cross-field paths in their area during the campaign. Priority cross-field paths are those paths where there has been a history of non-reinstatement as well as those routes promoted by the Council or a local P3 Group as local or regional recreational routes, or paths used for Routes to School. Intensively used intra-village paths will also be inspected.
- 3.3 Field-edge paths will be inspected where they connect with an inspected cross-field route, or where they form part of a route promoted by the Council or local P3 Group as local or regional recreational routes, or paths used for Routes to School. Intra-village paths and paths where there has been a history of encroachment will also be inspected.
- 3.4 Officers should use their background knowledge of individual cases and their own discretion in consultation with the Rights of Way Team Leader when deciding how to respond to a complaint. Officers should have regard to factors including: weather conditions, manpower, and machinery availability when considering their options.
- 3.5 When a request for action is made, Officers will respond in the time given in the Council's **Customer Service Charter** wherever possible. The complaint will be acknowledged within one working day and a full response provided within five working days. Where a site visit is required and a farmer needs to be contacted, the complainant should be informed that a full response will take longer. Where applicable, the Officer should conduct a site visit within five working days and should provide the complainant with a date by which they will receive a full response.

Campaign timescales

Activity	Start date
Ploughing letter & Guidance notes	Mid-August
Ploughing Campaign inspection/action	Begin end of September
Crop obstruction reminder letter	Mid-April
Cropping Campaign inspections	Begin mid-April

- 3.6 Campaign timings can be adjusted to accommodate exceptional weather or other circumstances at the discretion of the Rights of Way Team Leader.
- 3.7 Officers will ensure that arable farmer address lists are kept up-to-date to avoid duplication of reminder letters.

4 Cross-field paths where an offence has been discovered

- 4.1 Where an Area Officer is reacting to a reported offence, the path in question should be inspected and the landowner contacted within 5 working days of receipt of the complaint.
- 4.2 The Officer should acknowledge the complaint and provide a response detailing any actions undertaken/proposed to resolve the issue within the timeframes detailed in Section 3.5 above.
- 4.3 Sufficiently detailed records must be kept by each officer on CAMS⁴ from the initial complaint or inspection to enable a Schedule 12A notice to be served or ultimately a prosecution taken whilst minimising visits to the site.
- 4.4 The inspecting Officer should record on CAMS.
- The date and time of inspection, and name of Officer;
 - The parish, path number, and link references and a feature number if relevant;
 - The name and address of occupier. This must be confirmed if enforcement is anticipated.
- 4.5 The Officer must take a photograph of the substandard path and note from whence it was taken.
- 4.6 The inspecting Officer should record the condition of the path, taking note of:
- If a cultivation problem, has the field been ploughed for the first time or has a subsequent operation been carried out?
 - If the path is obstructed by crops, what type of crop? What height is the crop (4-6 inches is regarded as an obstruction in law)? Has the crop “lodged” (i.e. fallen over)?
 - If the path has been reinstated but an insufficient width is provided, what width is available?
- 4.7 Where possible, a scaled measure should be photographed with the path so it can be used as evidence if necessary.
- 4.8 The Officer should ensure that the reinstated route runs, where possible, within approximately 5 metres of the legal line of the path⁵ and has a rolled or otherwise consolidated surface over the full legal width of the path and is reasonably clear of crop debris.
- 4.9 The Officer should record a means of access and preferred means of enforcement, should this become necessary. Take note of gates, locks and

⁴ “CAMS” is the Countryside Access Team’s computerised Countryside Access Management System.

⁵ A higher level of positional accuracy may not be possible in large fields with curved paths. Where such precision is required, the costs of any survey will be recharged to the offender.

farm tracks and mark potential access routes on plan, and note ground conditions in relation to above.

- 4.10 Inspection of the path should be carried out using an extract from the Definitive Map, working copy, or survey maps to ascertain the correct⁶ line.

5 Cross-field paths inspected where no offence has been committed

- 5.1 Officers should record sufficient information to enable a survey report to be entered in CAMS.
- 5.2 Officers should take a photograph if it is felt necessary to prove to a complainant that reinstatement has occurred.
- 5.3 The Officer should note if further work would be required to continue compliance if (e.g.):
- Wheelings or canes have been used on a drilled field;
 - The crop is of a variety that will *lodge* later in the season;
 - A growing crop has been mown and is likely to continue to grow.

6 Field-edge paths where an offence has been discovered

- 6.1 In addition to the procedure for cross-field path offences at Section 4 above, Officers should:
- Check that a field-edge path is on the correct side of the boundary;
 - Check if the surface of the field-edge path is overgrown with scrub forcing the public to walk in the crop. Has the adjacent hedge grown across the width of the path to render it unusable? If so, arrange for the full width of the surface to be cleared or instruct the landowner to cut back the hedge;
 - Check if the path is on the Seasonal Vegetation Clearance list but has not been cut;
 - Check whether the farmer has been given permission to re-grade the path as part of any improvement works.
- 6.2 If none of the above are applicable, and the surface has been cultivated leaving less than the appropriate width, then an offence has been committed.
- 6.3 The Officer in consultation with the Rights of Way Team Leader should decide whether the farming activities have improved the surface of the path sufficiently to merit just the crop being removed or whether the entire surface of the path requires re-consolidated and rolling. The farmer should be

⁶ As defined in Section 4.8.

informed of the required remedial actions and given either a deadline of 14 days to restore the path to its full width or required to do so within this period once the crop has sprouted.

- 6.4 Where an Officer pursues the matter, the flow chart procedure should be followed.
- 6.5 Where the Officer decides not to pursue the matter, the Officer will write to the farmer informing him that they have committed an offence along with the reasons why no action is being taken.

7 Types of offenders

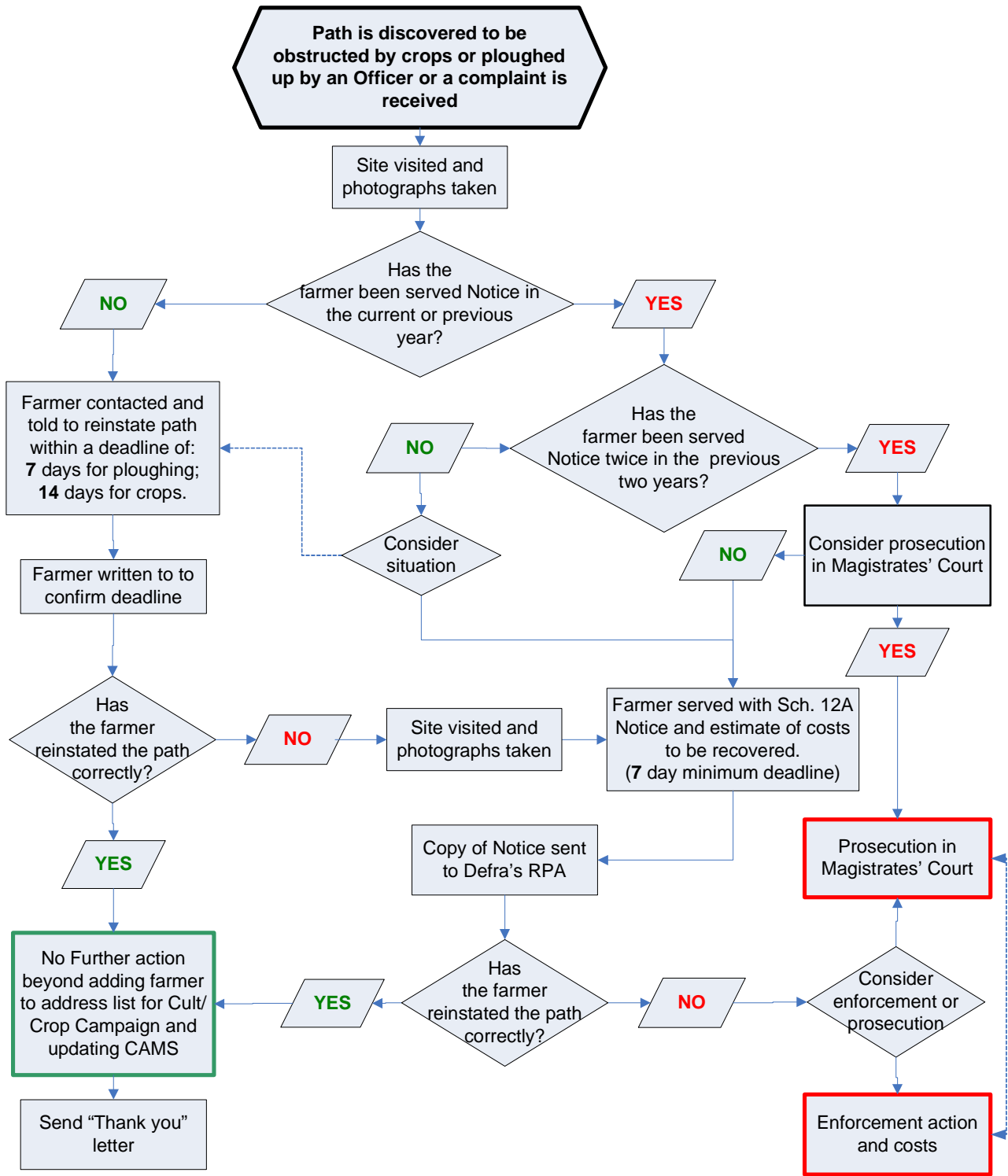
- 7.1 Offenders are likely either to be either owner-farmers or tenant-farmers; either of which may sub-contract out ploughing and cropping activities to a third party who may be unaware of the existence and widths of public rights of way where they are working.
- 7.2 Sections 134 (*ploughing*) and 137A (*crops*) specifically identify the occupier as the person responsible for ensuring compliance with the legislation.
- 7.3 Offending farmers are likely to fit into one of three groups:
 - **First offenders**, who may be unaware of the existence or precise width of a particular right of way. This may also apply to their contractors.
 - **Second offenders**, who will be aware of the existence and width of a particular right of way. They may have ignored their duty to reinstate the right of way, or simply may not have had the time, or suitable ground conditions to reinstate. Alternatively, they may not have informed a contractor of the location and widths of the right of way in question.
 - **Persistent offenders**, who know of the existence and width of a particular right of way and have not taken sufficient steps to ensure that either they, or their contractor, ensures that the right of way is reinstated as required by law.

8 Process to be followed (see Flowchart)

Initial report or discovery

- 8.1 Where an offence has been reported, the Area Rights of Way Officer will visit the site to ascertain whether an offence has actually been committed and take photographs within the limits imposed by the Council's **Customer Services Charter**⁷. If no offence has been committed the complainant should be contacted to explain why no further action will be taken.

⁷ See Section 3.5.



Flow chart for action in ploughing and cropping enforcement

Initial request for reinstatement

- 8.2 Before taking action against First or Second offenders an effort must be made to contact the farmer to discuss the issue and to ascertain why the path has not been reinstated and to remind the farmer of his obligations under the Highways Act 1980.
- 8.3 The Officer will follow up any discussion with a written direction to reinstate, giving either **7 days** notice for a ploughing offence, or **14 days** for a cropping offence. The letter must include a plan showing the route of the right of way and the width to be reinstated and a request that the farmer telephone/e-mail the Officer to report that reinstatement has been done.
- 8.4 Where a farmer cannot be contacted, the Officer should write to the farmer explaining that contact could not be made and instruct the farmer to reinstate, giving either **7 days** notice for a ploughing offence, or **14 days** for a cropping offence. The letter must include a plan showing the route of the right of way and the width to be reinstated, and a request that the farmer telephone/e-mail the Officer to report that reinstatement has been done. The letter must be sent by Recorded Delivery.
- 8.5 As soon after the deadline as possible, the Officer should visit the site to check the reinstatement has been carried out satisfactorily. If the reinstatement is satisfactory, the Officer will write to the farmer to confirm that the reinstatement meets the standards required and to inform them that the infringement has been logged and their crops may be checked the next year.

Persistent offenders

- 8.6 Where a farmer has been served Notices in the previous two years the Officer should consider serving Notice without warning as per the procedure at Section 4.8. If the Officer considers the reinstatement has **not** been carried out, or carried out satisfactorily as per Section 4.8 above after a verbal/written request to do so, photographs must be taken and widths of any unsatisfactory clearance or lack of wheelings/rolling recorded. Any action should be carried out as below and in line with Section 6 of the Council's **Enforcement Policy**. Only in exceptional circumstances, such as where the offender is deliberately obstructive, should the Officer, in consultation with the Rights of Way Team Leader, apply directly to the Magistrates' Court for a prosecution.

Service of Notice requiring reinstatement

- 8.7 If the Officer considers the reinstatement has **not** been carried out, or carried out satisfactorily as per Section 4.8 above after a verbal/written request to do so, photographs must be taken and widths of any unsatisfactory clearance or lack of wheelings/rolling recorded. Any action should be carried out as below and in line with Section 6 of the Council's **Enforcement Policy**.



- 8.8 The Officer should then contact the farmer to establish if there is a reason why reinstatement could not be carried out within the deadline given; for example: adverse weather, or machinery failure.
- 8.9 If the reason is acceptable then a short extension of up to 10 working days may be given. If contact cannot be reasonably made, or if the reason given is unacceptable, then Notice should be served on the farmer.
- 8.10 The Officer must ensure that the recipient is the person who owns or occupies the land over which the path runs. CAT parish files, the Land Registry, or the legislation outlined at Section 9.15 below may be used to obtain confirmation.
- 8.11 Determine that, should it be necessary, contractors will be physically able to access the site and carry out the reinstatement by referring to notes from initial inspection. Where the alignment of the path is not straightforward consider carrying out a full survey to pinpoint the legal line. Any costs of the survey will be charged to the farmer.
- 8.12 The Officer should contact an approved contractor to establish their availability to take enforcement action as soon after the deadline (+1 day) as possible.
- 8.13 Send the farmer the Notice with the appropriate covering standard letter depending on whether the notice is being served following a *7 or 14 day letter*, or with a *without warning Notice*. A plan of the path must accompany the Notice.
- 8.14 The documents should be served either in person⁸ or by recorded delivery.
- 8.15 Copies of the covering letter and Notice should also be sent to the Rural Payments Agency, the NFU branch secretary, and to the Country Land & Business Association's National Access Advisor.
- 8.16 Record all time taken in preparing the Notice and letter.
- 8.17 The Officer will re-visit the path as soon as the Notice deadline has expired to check the reinstatement has been carried out satisfactorily. If the reinstatement is satisfactory, the Officer will write to the farmer to confirm that the reinstatement meets the standards required and to inform him that the infringement has been logged and that their crops may be checked the next year.

Notice not complied with - Enforcement Action

- 8.18 If the Officer considers the reinstatement has **not** been carried out satisfactorily, photographs must be taken and widths of any unsatisfactory clearance or lack of wheelings/rolling recorded.
- 8.19 The officer should confirm that the Notice was delivered using the Royal Mail tracking website. If the Notice was not delivered the Notice must be hand

⁸ Where Notice is served in person the Officer must ensure that they comply with the Council's **Lone Working Policy** and **Violence and Aggression Policy**.

delivered in accordance with Council **Lone Working** and **Violence and Aggression Policy** guidelines.

- 8.20 Prepare plans of the path to be reinstated and if necessary a method by which the definitive line can be accurately followed. It may be necessary to carry out some surveying before the contractor begins cutting.
- 8.21 Contractors should ensure they keep to route of access as outlined in the Notice.
- 8.22 The Officer should try to inform the farmer that a contractor will clear the legal line to the recorded or maximum legal width as per the Enforcement Policy and served Notice and that all reasonable costs will be charged to the farmer.
- 8.23 The Officer instructs the contractor to reinstate and accompanies the contractor on-site. If the farmer has made known his intention to prevent access or to intimidate the contractor a request that the Police attend should be considered.
- 8.24 If the path has been reinstated when the contractor arrives but the Council has not been contacted as requested, any contractor or surveying costs will be charged to the farmer.

Notice not complied with - Prosecution

- 8.25 If the Officer considers the reinstatement has not been carried out satisfactorily after Notice being served, or if the farmer has been deliberately obstructive, photographs must be taken and widths of any unsatisfactory clearance or lack of wheelings/rolling recorded.
- 8.26 The Rights of Way Team Leader will decide if the Council should proceed with prosecution. If so, the farmer will be informed that the Council intends to prosecute and will be served notice of a Court date as appropriate.

9 The law regarding cultivation of public rights of way and the duties and the powers of Central Bedfordshire Council

Introduction

- 9.1 Section 130 of the Highways Act 1980 deals with the protection of public rights. Sub-section 1 makes it “...*the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority...*”.
- 9.2 The Rights of Way Act 1990 places a duty on the farmer to restore quickly the surface of any disturbed path, to make sure that its line is and stays apparent on the ground and to keep all public rights of way clear of crops that would make them difficult or inconvenient to use. The Highway Authority has a statutory duty to ensure that this is carried out and has a means of enforcing

the requirements in Schedule 12A of the Act. The Authority must be satisfied that the problem concerned does affect the public's use of the path, either by making it inconvenient to use or difficult to follow. If this is not the case, then the Authority does not have power under the Act to take action.

The relevant parts of the Highways Act 1980 (as inserted by the Rights of Way act 1990) are as follows:

- 9.3 **S. 131A:** The offence of disturbing the surface of a footpath or bridleway or any other non made up carriageway so as to render it inconvenient for the exercise of the public right of way. This can lead to a fine not exceeding *level 3 on the standard scale* when a prosecution is brought by the Highway Authority. This part of the Act is used for the cultivation of field edge paths.
- 9.4 **S. 134:** The right of the occupier to plough a cross-field path over a field of agricultural land where it is in accordance with the rules of good husbandry and it is not reasonably convenient to avoid doing so. Where a path has been ploughed the occupier has a duty “...to make good the surface of the path or way to not less than its minimum width as to make it reasonably convenient for the exercise of the right of way...” and indicate the line of the path to not less than the minimum width⁹. The time periods are: 14 days from the day of the 1st disturbance of the surface and in any other case 24hrs from the time when it was disturbed. The Highway Authority may, if approached before or during the relevant period, grant an extension not exceeding 28 days.
- 9.5 **S. 137A:** Deals with interference by crops. The occupier has a duty where crops other than grass are sown on agricultural land crossed by any relevant highway to ensure that:
- the line on the ground is indicated clearly to not less than the minimum width; and,
 - to prevent any crop from encroaching onto the highway as to render it inconvenient to use as a right of way.
- 9.6 Failure to comply is an offence and liable to a fine not exceeding *level 3*. A crop 4-6 inches high has been shown in court to be an obstruction¹⁰.

Schedule 12A: Further powers of Highway Authorities in relation to interference with highways.

- 9.7 **Minimum and maximum widths (1):** Where a path does **not** have a recorded width, this section details the minimum and maximum widths to be used for reinstatement. These are:
- cross-field footpath - 1m (min) - 1.8m (max);

⁹ Where the path does **not** have a recorded width, the *minimum* width is as set out in Schedule 12A of the Highways Act 1980.

¹⁰ Buckinghamshire County Council was prosecuted for not enforcing a 6 inch crop obstruction in c.1987.

- field-edge footpath - 1.5m (min) - 1.8m (max),
- cross-field bridleway - 2m (min) - 3m (max);
- field-edge bridleway - 3m (min & max) ;
- any other highway - 3m (min) - 5m (max).

9.8 Power to carry out works (3):

(1) Where a right of way has been disturbed so as to make it inconvenient to use (S. 131A), a Highway Authority may make good that surface to not less than the minimum width and not more than the maximum.

(2) Where the surface has been disturbed under the right to plough (S. 134) the above power cannot be used until the relevant period has expired or any extension granted under s. 135.

(4) If an occupier fails in his duties under Sections 134(3) or 137A(1), the Highway Authority may carry out works to rectify this.

9.9 Entry onto Land (7): Any person authorised in writing by the Highway Authority may enter onto the relevant land or other land in the same occupation for any purpose connected with carrying out the work and take any, vehicles, machinery or equipment as needed.

9.10 Service of Notice (8):

(1) except in the case of entry for obtaining information, before entering the land, the Highway Authority must give no less than 24hrs notice of intention including the following information

- a. – a) identify the relevant highway,
- b. b) specify the work to be carried out and the equipment to be used,
- c. c) identify the route of entry over the land and any needed to access the site for work,
- d. d) state the date and time when the power to enter onto the land becomes exercisable.

(2) if the occupier cannot be traced noticed can be served by fixing copies to conspicuous objects namely the end of the relevant highway or other suitable points.

9.11 Costs (9): the Highway Authority may recover any expenses reasonably incurred in, or in connection with, carrying out the work from the occupier of the relevant land or the person who disturbed the surface of the highway.

Other useful legislation when carrying out enforcement:

9.12 There are a number of powers which can aid an authority in gathering evidence to secure a prosecution and can be used where it is felt necessary:

9.13 Highways Act 1980 S. 289: A person authorised in writing by a Highway Authority may enter onto land for the purpose of surveying that land in

connection with any of their functions. There is a need to give **7 days** notice in writing.

- 9.14 **S. 297:** The Highway Authority can require the occupier of any premises to state in writing the nature of his own interest in the land and the name and address of any other person known to him as having an interest in any capacity.
- 9.15 **Local Government (Miscellaneous Provisions) Act 1976, S. 16:** allows an authority to serve notice on an occupier, any person with an interest in the land, or manager of the land requiring the recipient within a period of not less than **14 days** to inform the authority of nature of their interest in that land and the name and address of any person who they believe to be the occupier of that land.
- 9.16 **Police and Criminal Evidence Act 1984:** evidence and information can be obtained by interview but the subject can refuse as there are no special powers to interview them. If it does take place, the interview must be conducted with PACE guidelines if the information is to be given in evidence.
- 9.17 **Wildlife and Countryside Act 1981, S. 56(4):** a certified copy of the Definitive Map can be submitted as evidence of the existence of the right of way.
- 9.18 **HSE Green Code on Spraying:** guidance for farmers on spraying of crops including marking out rights of way.