

Statutory guidance under sections 147 and 147ZA of the Highways Act 1980 relating to the requirement for local authorities to have regard to the needs of people with mobility problems when authorising stiles and gates



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Introduction

- 2.1 This guidance is issued under sections 147 and 147ZA of the Highways Act 1980 (“the 1980 Act”), as amended by section 69 of the Countryside and Rights of Way Act 2000 (“the CROW Act”).
- 2.2. Section 69 amends section 147 of the Highways Act 1980 and introduces a new section 147ZA. The amendments to section 147 require authorities to have regard to the needs of persons with mobility problems when authorising the erection of stiles, gates or other furniture and enables the National Assembly for Wales to issue guidance to local authorities on what needs to be considered when authorising stiles and gates, etc. Local authorities must have regard to the guidance.
- 2.3 Section 69 also introduces a new section 147ZA which gives authorities powers to enter into agreements with landowners, lessees or occupiers of land to undertake work on a structure which is on a footpath or bridleway in order to replace it with a new or improved structure which will be safer or more convenient for persons with mobility problems.

The needs of people with mobility problems

- 2.4 The Rights of Way Improvement Plan (ROWIPs) guidance, which was issued by the Assembly Government in December 2002, sets out guidance to authorities on the needs of people with mobility problems. In addition the Assembly Government wishes to draw authorities’ attention to two other publications:
- ‘By All Reasonable Means: inclusive access to the outdoors for disabled people’.
 - Countryside for All Good Practice Guide extended CD edition, published by the Fieldfare Trust in 2005.
- 2.5 In the Assembly Government’s view, these two publications, together with the ROWIP guidance and the British Standard (BS5709 : gaps, gates and stiles), should provide authorities with enough information on how to assess the needs of people with mobility problems and to determine which routes should have priority for improved access for such people. The documents also make it clear that tackling physical barriers on rights of way is only one part of providing better access to the countryside for people with disabilities or mobility problems and that consideration needs also to be given to such things as publicity, parking and other relevant facilities. A number of authorities have already, in the course of their work on rights of way improvement plans, undertaken consultation on the needs of people with disabilities and mobility problems and have developed proposals for

improved access to the countryside.

Matters common sections 147 and 147ZA

- 2.6 Both sections contain powers to impose conditions on the design and maintenance of structures. Authorities are advised that these powers can be used to require, for example, that a structure complies with BS 5709.
- 2.7 Authorities should keep records of authorisations under section 147 and agreements under section 147ZA. It is the Assembly Government's view that the power to make definitive map modification orders (under section 53(3)(a) of the Wildlife and Countryside Act 1981) does not extend to require local authorities to record on the definitive map and statement the effect of such an authorisation or agreement. The only way in which such an authorisation or agreement can be recorded on the definitive map and statement is by an order under section 53(3)(c)(iii). Subsection (4) of section 53 makes it clear that a definitive map modification order may add details of limitations affecting the right of way to the statement. Authorities are encouraged to keep details of authorisations available for public inspection with the definitive map and statement.

Matters specific to section 147

- 2.8 No specific guidance has been issued to authorities about the exercise of their powers under section 147. Section 147 gives competent authorities power to authorise the erection on a footpath or bridleway (but not on a restricted byway or byway open to all traffic or cycle track) a stile, gate or other structure which prevents the ingress or egress of animals. The authority can act only on a representation from the owner, lessee or occupier of the land. The power applies only to footpaths and bridleways which cross land which is used, or is being brought into use, for agriculture (as defined in section 329 of the 1980 Act), forestry, or the breeding or keeping of horses. Any authorisation granted under section 147 does not permit any interference with private rights of access or the rights of statutory undertakers.
- 2.9 A competent authority may, if it decides to grant an authorisation, impose conditions for maintenance and for ensuring that the right of way can be used without undue inconvenience to the public. Authorities will be aware that powers are also available under section 66(3) of the 1980 Act for highway authorities to provide and maintain on a footpath or bridleway, such barriers, posts, rails or fences as they think necessary for the purpose of safeguarding persons using the highway.
- 2.10 The Welsh Assembly Government advises authorities that, before they authorise a new barrier under section 147, they should be satisfied on three

counts:

- ◆ That the land is being used, or is being brought into use, for agriculture, forestry or for the breeding or keeping of horses;
- ◆ That, in order for that use to be carried on efficiently, it is expedient for a structure to be erected on the path or way that crosses the land to prevent the ingress or egress of animals; and
- ◆ That the barrier being authorised is the least restrictive barrier that is consistent with the need to contain or exclude animals.

Matters specific to section 147ZA

2.11 Authorities will wish to note the following:

- ◆ It provides a power only to enter into an agreement. Authorities may not enter into an agreement except with the consent of every owner, lessee or occupier of the land on which the relevant structure is situated. There are powers, similar to those in section 147, to impose conditions, including conditions for future maintenance.
- ◆ The power to enter into an agreement is limited to structures which are “relevant structures”. These are structures which are lawful, and it is for authorities to satisfy themselves that a structure that is subject of a proposed agreement is a “relevant structure”. Any structure across a footpath or bridleway which is not a “relevant structure” can be dealt with by the authority under sections 130 and 143 of the Highways Act as an obstruction. In some circumstances, authorisation by the authority of a replacement structure under section 147 may provide a solution.
- ◆ A section 147ZA agreement can cover more than one structure.
- ◆ Authorities should ensure that the replacement structure is the least restrictive barrier that is consistent with any need to contain or exclude animals. Authorities should note that the power to enter into agreements does not extend to removal of structures without replacement: there has to be a replacement structure of some description. *Note:* In this case a gap conforming to BS5709 or similar could count as a structure if the circumstances of any particular case suggest it can do so.
- ◆ The power to enter into agreements envisages that works will follow, so the power cannot be used to enter into agreements to give retrospective effect to a physical change that has already been made.

**Welsh Assembly Government
March 2007**

Draft model section 147ZA agreement

(this does not form part of the statutory guidance)

FOR INFORMATION

These notes are included to provide an explanation of section 147ZA of the Highways Act 1980. They do not form part of the agreement.

1. The purpose of section 147ZA is to enable agreements to be made between local authorities and landowners, occupiers and lessees for the replacement of structures across public footpaths and bridleways, such as stiles and gates, with new structures that will be easier for the public to use, and in particular for those who have disabilities or mobility issues.
2. The agreement provides for the respective responsibilities of the owner, etc and the authority for the design and erection of the new structure and its subsequent maintenance.
3. Section 147ZA also provides that the owner’s right to erect and maintain a structure across the path or way will apply to the new structure, and cease to apply to the former structure, on such date as is specified in the agreement, or, if no date is specified, one year after the date of the agreement. However, if any conditions in the agreement are not adhered to, the right to erect and maintain the new structure will cease to apply unless and until the conditions are complied with, and the authority may require the structure to be removed.
4. **The model agreement may prove useful to authorities, owners, lessees and occupiers, but is only a suggested template and should be tailored to meet individual circumstances. Authorities, owners, lessees and occupiers should take legal advice before entering into an agreement under section 147ZA.**

<p>PROPOSED CONTENT OF AGREEMENT</p> <p><i>Items in italics are where details have to be added , or where one or more options are to be deleted as appropriate.</i></p>	<p>Notes</p>
<p>1. This is an agreement between the authority and the <i>[owner] [lessee] [occupier]</i> under section 147ZA of the Highways Act 1980 for the purpose of <i>[summary of the purpose of the agreement, eg replacing a stile on Hemsby footpath 4 with a kissing gate].</i></p>	<p>Included to provide a summary of what the agreement is about, to state the parties to the agreement and to make it clear that it is an agreement under section 147ZA.</p>

2. In this Agreement, the following definitions apply and terms not defined have the meaning assigned to them in the Highways Act 1980:

“authority” means the local highway authority or other competent authority, or any other authority acting under an agreement with the local highway authority or other competent authority which provides for that authority to be able to enter into an agreement under section 147ZA;

“existing structure” means the *[description of the structure]* at *[description of location, including a grid reference]* and shown as point A on the plan attached to this Agreement;

“lessee” means *[details of lessee]*;

“new structure” means the *[description of the structure]* at *[description of location, including a grid reference]* and shown as point A on the plan attached to this Agreement;

“occupier” means *[details of occupier]*;

“owner” means *[details of owner]*;

“qualifying works” mean all the works as described in the Schedule to the Agreement necessary to remove the existing structure and erect in its place the new structure;

“right of way” means the *[footpath]* *[bridleway]* on which the existing structure is located, *and which is recorded in the definitive map and statement for [name of definitive map] as [parish name and number of right of way]*.

3. The right of way is subject to a limitation whereby the owner/lessee/occupier has the right to erect and maintain the existing structure *[by virtue of an authorisation granted on (date) by (name of authority which granted the authorisation)]*.

Makes it clear that any terms not defined take any definition given to them in the 1980 Act.

Allows for there to be an agent authority which has power under its agency agreement to enter into section 147ZA agreements.

Include where there is a lessee.

Include where there is an occupier separate from the owner.

Include the definitive map reference for the right of way where it is so recorded.

Give details of the section 147 authorisation if there is one.

<p>4. The owner/lessee/occupier agrees to undertake the qualifying works within three months of the date of this Agreement and to notify the authority when the works have been completed.</p> <p>5. The authority agrees to reimburse the owner/lessee/occupier for expenses reasonably incurred in undertaking the cost of the qualifying works.</p> <p>6. <i>For the purposes of subsection (5) of section 147ZA the effective date of this Agreement is [insert date].</i></p> <p>7. <i>The [owner], [lessee] and [occupier] have consented to the making of this Agreement.</i></p> <p>8. <i>The following conditions apply to this Agreement: [specify conditions]</i></p> <p>9. <i>The new structure is deemed to be erected under this Agreement only if the conditions specified in clause 8 are being complied with.</i></p> <p>Signed: <i>[by parties to the agreement]</i></p> <p>Date:</p>	<p>Rewrite this and the next clause as appropriate if the authority is to undertake the works and the owner/lessee/occupier is to meet any of the costs.</p> <p>Add additional text if desired to provide for inspection by the authority prior to any payment being made.</p> <p>Use this clause only if the effective date is to be specified: the default is one year from the date of the agreement.</p> <p>Include if there is an occupier or lessee separate from the owner, and delete as appropriate.</p> <p>Include if conditions are to be specified (subsections (3) and (4)).</p> <p>Include if conditions are specified.</p>
<p>PLAN Showing the path or way and, as point A, the location of the existing structure.</p>	

SCHEDULE	
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Description of qualifying works.	
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Annex 1

Existing Guidance

1. BS 5709: the British Standard for gaps, gates and stiles

The first British Standard for Stiles, Bridle Gates and Kissing Gates was published in 1979, with an amendment published in 1982. It provided guidance on design and dimensions. A second version published in 2001 (revised in 2006) is less prescriptive and seeks to do more in giving guidance on the adoption of a least restrictive access approach (LRA), as its scope shows

This British Standard specifies field-measurable performance requirements for gaps, gates and stiles for footpaths and bridleways... It provides a hierarchy of performance requirements to enable choices to be made as to which type of structure is most appropriate in given circumstances.

2. The Disability Discrimination Act 1995 (“the DDA”)

This Act imposes general duties on service providers. A “service provider” is a person or organisation providing services to the public. It is unlikely that a landowner over whose land a right of way runs (or a lessee or occupier) would be considered to be a “service provider” (although someone choosing to provide a permissive path might well be a “service provider”). However a competent authority deciding under section 147 or 147ZA to grant an authorisation or enter into an agreement, or considering under section 146 whether to take enforcement action over a defective stile, would, it is thought, be a “service provider”. The same would be true of an authority considering the making of a public path creation or diversion order in which a limitation might be imposed on the newly-created length of path.

The DDA has been amended by the Disability Discrimination Act 2005 (“the 2005 Act”), which requires public bodies to promote disability equality and applies to all functions of public bodies, not simply those where the body is a “service provider”.

It is unlawful for a service provider to discriminate against a disabled person by:

- refusing service;
- providing service of a worse standard or in a worse manner; or
- providing service on less favourable terms,

except in certain circumstances which are specified in legislation. The Disability Rights Commission’s Code of Practice provides guidance on the circumstances when discrimination may be justified.

In the case of section 147, the service is being provided to the applicant,

whereas the potentially harmful effect, so far as the DDA is concerned, is on the third-party user of the public right of way. It is suggested that the issue can be resolved by regarding the highway authority's general duties under section 130 of the same Act to prevent, as far as possible the obstruction of highways as being a function where it is a service provider to the public, and its functions under section 147 have to be carried out within the context of section 130.

Other duties under the DDA include the taking of reasonable steps to:

- change policies, practices and procedures which make it impossible or unreasonably difficult for disabled people to make use of a service;
- provide auxiliary aids and services if these would make it easier for disabled people to make use of a service; and
- remove physical barriers which make it impossible or unreasonably difficult for disabled people to make use of a service or provide the service by a reasonable alternative means.

However, highway authorities do not “provide” existing public footpaths and bridleways, and it therefore seems doubtful that the DDA could be considered to require authorities to seek to remove physical barriers on rights of way, although this question has yet to be tested in the courts and the amendments made by the 2005 Act may have a bearing on it. However, even if the DDA was held so to require, a further issue would be whether an authority has any power to require the removal of a lawful barrier such as a stile or gate (except where the authority has provided the barrier for example under its powers in section 66 of the Highways Act to provide barriers for safety reasons). Section 147 contains no clear power to revoke an authorisation, even if the agricultural or other reasons for granting the authorisation no longer apply. Nor does it contain a clear power to impose conditions that effectively lead to revocation, e.g. if the land is no longer used for keeping animals. Section 147ZA is a power to enter into agreements: there is no power to compel an unwilling landowner, lessee or occupier to enter into such an agreement.

3. Rights of way improvement plans

Local highway authorities are under a duty (under section 60 of the CROW Act) to prepare rights of way improvement plans (ROWIPs) within five years of the commencement of the relevant provisions in November 2002. The ROWIP must contain an authority's assessment of certain matters, including the accessibility of local rights of way to blind or partially sighted persons and others with mobility problems, together with a statement of the action the authority proposes to take for the management of local rights of way and for securing an improved network of local rights of way. There is also an expectation in the ROWIP guidance issued to local highway authorities that authorities will use ROWIPs to plan strategically for the development, better management and promotion of their existing local rights of way.

The Welsh Assembly Government issued guidance in December 2002 on the preparation of their plans and a number of authorities are in the process of publishing their assessments or draft ROWIPs.

An extract of the guidance is set out below:

“Assessing the needs of people with mobility problems

The Act specifically requires local highway authorities to assess the needs of blind or partially sighted people and others with mobility problems. Local authorities also have duties under the DDA. People with mobility problems can include, for example, older and disabled people, or those with young children and pushchairs. Family and friends who accompany people with mobility problems are also affected by the accessibility of the network.

Local highway authorities should assess the need for works to existing ways and the need for new ways to enable people with mobility problems to enjoy a higher proportion of the network than is currently the case. In making these assessments, local highway authorities should work on the principle that the needs of people with mobility problems should always be taken into account in the management, maintenance, promotion and improvement of local rights of way. Authorities should also bear in the mind that needs differ between individuals of varying abilities.“

4. Welsh Office Circular 5/93 on Public Rights of Way

“The [National Assembly for Wales does] not regard it as practicable to recommend specific standards for the maintenance or restoration of the different kinds of public rights of way. The main consideration in determining the degree of maintenance for individual paths or ways is that they should serve the purpose for which they are primarily used and not that they should conform to an arbitrary standard of construction or maintenance. Generally speaking they should be capable of meeting the use that is normally made of them throughout the year. In addition whatever work is done should harmonize with the general appearance and character of the surroundings. Authorities should also seek to use any assistance which may be available from landowners and voluntary groups, in carrying out their work.”

**5. Disability Unit (Department Of Social Security) Guidance Note:
The Disability Discrimination Act 1995: Access to the Countryside
[February 1997]**

ACCESS TO THE COUNTRYSIDE

Rights of way

It is unlikely that the owners of the land over which the public has a right of way are providing a service to the public. Although they are already under a general

duty not to obstruct the right of way¹ or refuse someone, including a disabled person, access to the land, it is doubtful that they will be affected by the Act.

Highway authorities, on the other hand, have a duty to keep access over private land to which the public has a right of passage free from obstruction, to maintain its surface and ensure that these routes are properly signposted. In fulfilling these duties, highway authorities are providing a service to the public and will therefore have to ensure that they do not treat disabled people less favourably than others.

Highway authorities will also have to consider whether they will be affected by the Act's later duties. For example, they might have to take steps to ensure that it was possible for disabled people to take part in any public consultations they undertake (for instance, by changing a policy of providing consultation documents only in small print sizes), which made it impossible or unreasonably difficult for disabled people to use it. They might also want to ensure that landowners did not erect a particular design of stile which made it impossible or unreasonably difficult for disabled people to use it.

6. Extract from the IPROW Rights of Way Good Practice Guide **Statutory provision for gates and stiles**

The statutory provisions for gates and stiles are contained in ss .145, 146 and 147 of the Highways Act 1980. Statute covers the liability for maintenance of gates and stiles, the circumstances where new structures can be authorised and the circumstances where the highway authority may require gates to be widened.

Maintenance of existing stiles and gates

It is the owner who must maintain stiles and gates on footpaths and bridleways across his/her land in a safe condition for use by the public. The relevant statutory provisions are found in s.146 of the Highways Act 1980. The owner of the land is defined as the person who, either in his/her own right or as agent or trustee, is entitled to receive what is known as the "rack rent" of the land. "Rack rent" is a legal term and is held to be not less than two thirds of the notional amount of money that land may be rented out for if it were to be let year by year. The term "owner" can include a body, such as a limited company or partnership. Where land is tenanted, the tenant may be obliged to repair gates and stiles as part of the tenancy agreement. However, under s.146, the final responsibility for repair rests with the owner.

As stiles and gates on rights of way are often found on boundaries between different landholdings, it not always easy to find out who owns them. In such cases, it is usually the landowner responsible for the repair of the boundary fence

¹ Although there is express provision in section 147 of the Highways Act 1980 for the erection of stiles by the landowner (subject to consent of the highway authority) ¹

or hedge who has the responsibility for the gate or stile within it. In some circumstances, the stile or gate is the responsibility of the highway authority or the district council (this is common in cases where the structure is on a promoted route), but there should be a written agreement between the authority and the landowner that documents this fact. Where a gate or stile is authorised under s.147 of HA80 (see below), conditions may be imposed about its maintenance that override the provisions of s.146 (see below).

If the owner of the land incurs expense in complying with the duty to repair a stile or gate, then he/she is entitled to recover at least 25% of the expenditure from the highway authority. Increasingly, highway authorities have adopted the practice of supplying gate and stile kits to landowners instead of making a monetary payment. This has come about because of the high cost to the authority of processing what are usually very small payments.

The practice has the added advantage that the authority is able to supply kits of an acceptable standard, thus avoiding disagreement over the quality of the structures provided by landowners. However, authorities generally check that the kits they have supplied have been correctly installed. It is also prudent to confirm in writing that the supply of the kit is discretionary and does not imply that the authority takes responsibility for repair of the structure.

The standard of repair required is set by the authority. The gate or stile must be maintained in a safe condition and must not represent an unreasonable interference with the rights of the public using the path. Stiles and gates vary in their construction and it can be difficult to lay down a single standard that suits all circumstances. A judgement on the safety of the structure and the ease with which it can be used will have to be made having regard to the use made of the path, its location and the state of repair of the structure. However, some general points can be made:

- gates on bridleways should be easy to open by both mounted riders and by pedestrians;
- it should be possible to operate all fastenings easily (single-handed, in the case of a horse rider);
- it should be possible to mount, climb over and dismount any stile without catching clothing or slipping; exposed electric fencing and barbed wire should not pass over gates or stiles or round gateposts.

There is no obligation on the landowner to improve a stile, or to replace one with a gate or other structure. However, if the highway authority considers that an owner has not kept a gate or stile in a safe condition and to an adequate standard of repair, it may give the owner and the occupier 14 days' notice of its intention to carry out the repair itself. A highway authority that serves notice in this way may recover its costs from the owner. Before serving notice it is important to identify the owner correctly; where the owner is not the occupier, then notice must also be served on the occupier.

Authorisation of new structures

Statutory authorisation of stiles and gates is under the provisions of HA80 s.147. The circumstances under which new gates and stiles can be authorised by the highway authority are limited and the section applies to [land being used for agriculture or being brought into use for agriculture. In this instance the term “agriculture” includes forestry. The s.147 provision does not apply to any other class of land, for example, residential land or parkland. Use of land for keeping horses which are not used for agricultural purposes is not considered to be “agricultural”, although this has not been tested in the courts.] In addition to applying solely to agricultural land, or land being brought into use for agriculture, stiles and gates may only be authorised to control the ingress and egress of animals where it is considered expedient to do so for the efficient use of the agricultural land. The decision of the highway authority is discretionary and there is no right of appeal other than by way of judicial review of the decision in the High Court. There is no power to authorise the erection of a gate on a byway, even if it crosses agricultural land. [Note: This section is yet to be updated to reflect the insertion into section 147 the words “...forestry and for the breeding and keeping of horses” as inserted into the Highways Act 1980 by the CROW Act 2000 (Commencement No.8) (Wales) Order 2006.]

In authorising a stile or gate, the highway authority may impose conditions as to the future maintenance of the structure and these may override the statutory provisions of s.146. An authority may impose the condition that newly authorised structures will be maintained solely by the landowner, removing the obligation of the authority to contribute to the expense. The authority may also impose conditions as to the type and design of the structure. This enables the authority to ensure that new structures meet modern design standards. If the conditions attached to the permission are not complied with, then an authority may treat the structure as an obstruction and deal with it accordingly. There is no right of appeal against the imposition of conditions other than by way of judicial review of the decision in the High Court. It is not possible retrospectively to impose conditions on an authorised structure.

It is important to keep a record of all authorisations and any conditions. Ideally, authorisations should also be recorded in the definitive statement.

Gates

There are specific provisions under HA80 s.145 that enable the highway authority to require the widening of gates across carriageways and bridleways. These relate to any authorised structure, including those on bridleways that are the subject of a specific permission under s.147, and those on byways or on bridleways that are recorded as limitations in the definitive statement. The highway authority may serve a notice on the owner requiring that a gate on a bridleway be widened to 5 feet and a gate on a carriageway to be widened to 10 feet. The width is to be measured between the gate posts.

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