



## Rights of way - issues arising for farmers and growers

**All landowners will at some time encounter visitors who have a right to be on their land and unfortunately those that don't. Here is our guide to keeping lawful visitors safe and the key points to know when removing those that shouldn't be there.**

### What is trespassing

Trespassing is the unlawful entry of one person on to another person's property. If express or implied permission isn't given by the landowner, or the person entering does not have lawful authority or exceeds that authority, then that person is trespassing.

A person exercising a public right of way over land has lawful authority to enter the land providing they exercise only that right, and not a greater right and do not stray from the public right of way on to adjoining land which is not subject to it.

A footpath, bridleway or carriageway is a Highway i.e. a defined route, or "way", over which "the public at large" can pass and repass as frequently

as they wish, without hindrance and without charge as of right rather than with permission.

### Examples:

- Use of a public footpath as a public footpath at any time of the day or night and as often as they want is not a trespass;
- Riding a bicycle along a public footpath is a trespass;
- Riding or leading a horse along a public footpath is a trespass;
- Riding a bicycle along a bridleway is not a trespass, providing the cyclist gives way to walkers and horse riders;
- Driving a car along a bridleway is a trespass.

### Regina v Mathias 1861

This case decided that "The use of a public footway includes that of a perambulator as a usual accompaniment of a large class of foot passengers, if of a size and weight not to inconvenience other passengers, and not to injure the soil."

So, what about a dog? R v Mathias is cited as authority for a dog being a "usual accompaniment"

So, is a cyclist wheeling (but not riding) a bicycle a trespasser or not? Is a bicycle a "usual accompaniment"?

Are a string of dogs being walked by a dog-walker a "usual accompaniment"?

But: **League Against Cruel Sports Ltd v Scott** 2 April 1985 (hounds entering a wild deer sanctuary on Exmoor) is authority for it being a trespass for a dog to run off the line of the path. The Master of Hounds must have known there was a real risk of the uncontrolled hounds entering on to the sanctuary.

Landowners cannot interfere with exercise by the public of a public right of way. The right includes activities reasonably incidental to the exercise of the right such as stopping to rest or admire the view.

If someone is considered to be trespassing, they should be asked leave. If they refuse, a landowner is allowed to use 'reasonable force' to remove them. However, what is 'reasonable force' depends on the situation. Landowners are not permitted to use weapons to remove a trespasser as this would be considered excessive force and would likely constitute assault and could lead to prosecution.

But... **DPP v Jones (Margaret)** 4 March 1999 a case of non-obstructive demonstration near Stonehenge decided that the public's right to use a highway included a right of peaceful assembly provided the assembly did not obstruct the highway either by unreasonably

impeding the public's right of passage or because the assembly amounted to a public or private nuisance. Clearly that is unlikely to apply in a private land setting as the "public highway" would not normally be large enough to accommodate a demonstration within its confines.

Obstruction of a right of way is a criminal offence so the Police should intervene.

### Trespassers will be prosecuted?

Trespassing is usually a civil wrong with police having no authority to arrest a mere trespasser, but they can and may help you remove them e.g. in connection with potential criminal offences.

For example:

Trespassing on land with vehicles;

- causing damage when entering or occupying property
- stealing from property
- Fly-tipping

Part V of the Criminal Justice and Public Order Act 1994 (CJPOA 1994) gives powers to the police and to local authorities to remove trespassers in certain designated circumstances, including:

- Powers for the police to arrest persons and seize and retain vehicles and other property (sections 60C to 60E).
- Powers for the police to remove trespassers intent on residing on land with 6 or more vehicles having been asked to leave (section 61).
- Powers for the police to seize vehicles on land (section 62).
- Powers for the police to deal with raves (sections 63 to 66).
- Offence of aggravated trespass i.e. intimidation obstruction or disruption of lawful activities, (section 68).
- Powers for the police to remove persons committing or participating in aggravated trespass (section 69).
- Powers for the local authority to remove unauthorised campers and their vehicles (sections 77 to 79)

If the trespasser is accused of aggravated trespassing, then the maximum punishment is three months' imprisonment, but first-time offenders are likely to receive a fine. If the trespasser is accused of trespassing with the intent to commit theft, then the punishment can be up to several years' imprisonment.

### Liability to trespassers

An occupier of premises owes a duty of care to a trespasser in respect of any risk of the

trespasser being injured on the premises because of the state of the premises or things done or omitted to be done on them (section 1, Occupiers Liability Act 1984) (1984 Act).

An occupier owes a higher duty of care to a lawful visitor and must take such care as is reasonable in all the circumstances to see that the visitor will be reasonably safe in using the premises for which the visitor is invited or permitted to be there (section 2(2), Occupiers' Liability Act 1957) (1957 Act).

Trespassers include people who stray from the right of way onto adjoining land. The level of liability a farmer owes a person on his land depends on whether their presence is lawful or they are trespassing.

When holding livestock in fields adjacent to public rights of way, farmers must be alert to the dangers cattle and other animals can pose to members of the public, and the risks that may arise from even apparently docile animals. Sadly, in recent years there have been several tragic deaths and injuries especially from cattle. The occupier owes a duty to trespassers if he:

- Is aware of the danger;
- Knows or has reasonable grounds to believe a person may get in the vicinity of the danger; and
- Should reasonably be expected to offer the person some protection.

In terms of what livestock are allowed, farmers are banned from keeping specified breeds of dairy bull in fields crossed by a public right of way. These include Holstein, Friesian, Ayrshire, Dairy Shorthorn, Jersey, Guernsey and Kerry. It must also be noted that beef bulls over ten months old can only be kept in fields crossed by public rights of way if they are kept with cows and heifers.

A full assessment of those risks must be made, and, recorded, and appropriate action taken to minimise that risk. This may mean a variety of measures, from locating cattle in different fields, permanent or temporary fencing, the provision of signs or the relocation of feed areas away from public access.

### Clear signposting:

If a person wanders from the legal route a farmer may then owe the duty of care which applies to that person because they have become a trespasser rather than a lawful visitor. It is important to clearly signpost rights of way to encourage walkers to stick to the route, especially when spraying and harvesting.

There is no automatic right to walk across agricultural or other private land, other than on a public right of way even if someone thinks

doing so wouldn't cause any damage. The right to roam over certain areas of land under the Countryside and Rights of Way Act 2000, includes:

- Any land shown on a map as 'open country';
- Registered common land (parts of the New Forest);
- Land which is higher than 600m above sea level; and
- Dedicated land.

### Unrecorded rights of way:

The cut-off date for registering rights of way which may have been used for years and not registered has been extended to 1 January 2031. Anyone can apply for a Definitive Map Modification Order so if land is being use which you don't want to be turned into a public right of way, then you need to consider what options are available to prevent use of it. There is no legal requirement for the owner and occupier of the land to be consulted so consider if any of your land holdings could be affected.

### Landowners rights:

Whilst the right to roam lets someone go onto open access land for the purpose of open-air recreation (such as walking). It doesn't give them the right to do what they want on that land, or cause any damage to hedgerows, fences or walls. In England and Wales, it doesn't give someone the right to 'wild camp'.

If someone breaches any conditions (including allowing a dog to run free around livestock), then they can be treated as a trespasser. This will mean the landowner has the right to stop them from going onto their land (even if it's elsewhere) for 72 hours after they have been asked to leave.

It's difficult to stop people from accessing your land if there are footpaths and public access points going across it. You can restrict access for up to 28 days a year, which is often the case during lambing season or at other critical times during the year, so that livestock are not at risk of being disturbed.

You can't put up 'No Trespassing' signs on access land, or any sign that's designed to deter the public from walking through access land. You also cannot use threatening behaviour or deliberately put the public at risk, for example by putting up barbed wire at public access points.

### Fencing rules:

A farmer or landowner cannot use fencing to prevent a person using a public right of way or they face being taken to court for causing an obstruction. They are, however, able to fence land to prevent unauthorised access. Temporary fencing may be used to separate

land from a right of way so long as the path remains open for the public to use.

Where unauthorised access takes place, you should take action to prevent it otherwise it can lead to public rights being acquired.

A farmer can make a request to the highway authority to divert a path, but there is no obligation to process applications to change the route of the path so it can take time.

The new route must be enjoyable and convenient for the public, so farmers are advised to think about the surface of the path and how easy it is to walk on, the number of gates, and how pleasant the new route would be to walk compared to the existing one.

### What about dogs?

Sadly, incidents of dog worrying and attacks on livestock have been increasing and from 18 March 2026 the law changes, The Dogs (Protection of Livestock) (Amendment) Act 2025.

These changes strengthen the tools available to police and the courts including an unlimited fine for worrying and the ability to enter premises and seize dogs so they can respond more effectively when incidents happen. The law now also includes attacks on Llamas and Alpacas.

Where livestock worrying or an attack happens, farmers should report it to the police and keep any evidence. Record dates, times and if possible, take photos or video and witness details. Check whether signs, fencing and footpath management needs to be updated.

Landowners are able to apply for the exclusion of dogs from fields where sheep are kept at lambing time, as long as the enclosure is smaller than 15 ha (37 acres).

If a walker doesn't comply with the restrictions on access and rules concerning dogs, then they have no entitlement to be on that land and are effectively a trespasser. The landowner can therefore ask that person to leave the land.

Where land is mapped as open access land under the Countryside and Rights of Way Act 2000 a dog only needs to be kept on a short lead of fixed length of no more than two metres:

- From March 1 to July 31;
- At any time of year where a dog is in the vicinity of livestock.

However, if the Countryside and Rights of Way Act 2000 land is crossed by a public footpath, the rules change. Here, where a walker uses a public right of way to cross open access land, only the right of way rules apply. This means if the dog owner follows the line of



the public footpath on the land, there is no statutory requirement for them to have their dog on a lead.

There is a provision in the Animals Act 1971 that affords a farmer a defence to a civil for shooting a dog which attacks or chases his livestock:

#### *Protection of livestock against dogs*

#### **Killing of or injury to dogs worrying livestock.**

- (1) In any civil proceedings against a person (in this section referred to as the defendant) for killing or causing injury to a dog it shall be a defence to prove –
  - (a) that the defendant acted for the protection of any livestock and was a person entitled to act for the protection of that livestock; and
  - (b) that within forty-eight hours of the killing or injury notice thereof was given by the defendant to the officer in charge of a police station.
- (2) For the purposes of this section a person is entitled to act for the protection of any livestock if, and only if –
  - (a) the livestock or the land on which it belongs to him or to any person under whose express or implied authority he is acting; and
  - (b) the circumstances are not such that liability for killing or causing injury to the livestock would be excluded by section 5(4) of this Act.
- (3) Subject to subsection (4) of this section, a person killing or causing injury to a dog shall be deemed for the purposes of this section to act for the protection of any livestock if, and only if, either—
  - (a) the dog is worrying or is about to worry the livestock and there are no other reasonable means of ending or preventing the worrying; or

- (b) the dog has been worrying livestock, has not left the vicinity and is not under the control of any person and there are no practicable means of ascertaining to whom it belongs.

- (4) For the purposes of this section the condition stated in either of the paragraphs of the preceding subsection shall be deemed to have been satisfied if the defendant believed that it was satisfied and had reasonable ground for that belief.
- (5) For the purposes of this section –
  - (a) an animal belongs to any person if he owns it or has it in his possession; and
  - (b) land belongs to any person if he is the occupier thereof.

Where a field is home to sheep or other livestock, a dog must be on a lead or under close control.

#### **Hare Coursing**

On 1 August 2022, amendments under the Police, Crime, Sentencing and Courts Act 2022 strengthened the powers and penalties available to tackle the practice of hare coursing, including:

- Increasing the maximum penalty for trespassing in pursuit of game under the Game Acts (the Game Act 1831 and the Night Poaching Act 1828) to an unlimited fine and introducing the possibility of up to six months' imprisonment.
- Introducing two new criminal offences: firstly, trespass with the intention of using a dog to search for or pursue a hare; and secondly, being equipped to trespass with the intention of using a dog to search for or pursue a hare, both punishable on conviction by an unlimited fine and up to six months' imprisonment.
- New powers for the courts to order, on conviction, the disqualification of an offender from owning or keeping a dog.

## Case study

### Peter Burfoot acted for the landowner in this case which serves as a good reminder that landowners need to be proactive in keeping evidence and responding to use of rights of way on their land.

#### When a Footpath Isn't a Bridleway: Lessons for Landowners from a Definitive Map Modification Order

Public rights of way disputes can be stressful, time-consuming and costly for landowners. A 2013 Planning Inspectorate decision concerning a route at East Chiltington in East Sussex offers helpful guidance for landowners facing an attempt to upgrade an existing public footpath to a bridleway.

In this case, East Sussex County Council made a Definitive Map Modification Order (DMMO) seeking to upgrade a recorded public footpath to bridleway status. The proposed change was supported by equestrian groups who argued that historic evidence and user activity demonstrated that horse riders had long used the route "as of right". The landowners objected, and the matter proceeded to a public inquiry. Ultimately, the Inspector refused to confirm the Order.

#### The Legal Tests

For landowners, it is important to understand that DMMO cases are evidence-based, not policy-based. The Inspector was required to determine whether the legal tests under section 53 of the Wildlife and Countryside Act 1981 were met. In practical terms, this meant examining whether evidence showed that the footpath "ought to be shown" as a bridleway.

Much of the argument focused on section 31 of the Highways Act 1980. Under this provision, if the public has used a route "as of right" (without force, secrecy or permission) for at least 20 uninterrupted years, a presumption of dedication can arise, unless there is sufficient evidence that the landowner had no intention to dedicate the higher right.

The critical question therefore became: was there 20 years of qualifying bridleway use, and had the landowner done enough to demonstrate a lack of intention to dedicate?

#### Historic Documents Are Not Determinative

Supporters of the upgrade relied heavily on old Ordnance Survey maps and other historic documents showing the physical existence of a through route dating back to at least the 19th century. However, the Inspector emphasised a point that will reassure many landowners: OS maps show physical features, not legal status.

Although the historic mapping suggested the route may once have accommodated horses or vehicles, this did not establish that public bridleway rights existed. The documentary evidence was found to be consistent with the route being a private occupation road, with or without limited public rights.

Importantly, the route had been recorded as a footpath on the Definitive Map in the 1950s without objection at the time, suggesting it was not then regarded as a bridleway.

#### The 20-Year Use Period: A Common Weak Point

Thirty-one user evidence forms were submitted, with riders claiming use from the 1960s onwards. However, the Inspector closely scrutinised the relevant 20-year period.

Use had been brought into question in 1986/87 when equestrian groups formally sought bridleway status and the county council refused. That refusal was reported publicly within local groups. Later, in 2001, the landowner deposited a statement and map under section 31(6) of the Highways Act 1980 confirming that only a footpath was acknowledged. Signs stating "Private Road – Public Footpath Only – No Bridle Way" were erected from 2006.

The Inspector concluded that the relevant 20-year period ran from 1966/67 to 1986/87. Crucially, there was insufficient evidence of significant bridleway use in the early part of that period. Most claimed use began after 1980. Without consistent, substantial use across the full 20 years, the statutory presumption could not arise.

#### Evidence of Lack of Intention Matters

Even if use had been sufficient, the landowner (and previously the local authority owner) had consistently indicated no intention to dedicate bridleway rights. The 1986/87 refusal, internal documentation, and later the formal section 31(6) deposit all reinforced that position.

The Inspector also rejected any suggestion of dedication at common law, noting that landowners had consistently resisted upgrading the route.

#### Practical Lessons for Landowners

This case offers several practical takeaways:

Use section 31(6) deposits proactively. Lodging a highways statement and map can be powerful evidence that you do not intend to dedicate additional rights.

Erect clear signage. Signs stating the recorded status of a route can help bring higher use "into question" and stop the clock on any 20-year period.

Respond formally to upgrade requests. Written refusals can later demonstrate lack of intention to dedicate.

Scrutinise user evidence carefully. The 20-year period must be continuous and supported by credible, consistent evidence.

Finally, remember that DMMO decisions are not about desirability or safety. In this case, arguments about reducing road riding risks carried no weight. The decision turned entirely on legal evidence.

For landowners facing similar challenges, this decision underlines an essential principle: consistent, documented resistance to upgrading rights of way can make the difference between retaining control and losing it.

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