



**Buckinghamshire
Council
Rights of Way
Enforcement Policy**

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1.0 INTRODUCTION

Buckinghamshire Council has a duty under section 130 of the Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment of, and to prevent so far as possible, the unauthorised stopping up or obstruction of, all public rights of way and unsurfaced roads in the County of Buckinghamshire (BC).

2.0 PURPOSE OF POLICY The aim of the Highways and Technical Service (HT Service) is to ensure that all the highways within the area of BC remain in a condition that is safe and easy for use by the public; to carry out practical works in order to maintain the highways; advise and negotiate and, where necessary, take direct enforcement action or prosecute individuals or organisations in breach of the law.

The HT Service provides information, education and advice to all those who use or wish to use the public rights of way network in Buckinghamshire. The HT Service also gives advice, practical assistance and guidance to help farmers and landowners comply with the law. This document sets out BC's Rights of Way enforcement policy: its purpose; legal powers; the details of the policy; and how it should be interpreted and implemented. The enforcement policy is required to:

- clarify the circumstances in which BC's enforcement powers, (primarily under the Highways Act 1980 but also in consideration of all other enforcement powers available to BC) will be implemented;
- ensure that enforcement decisions are transparent; and
- ensure that enforcement procedure is consistent.

Enforcement action is a general term used within this document to cover the range of options, including negotiation and advice, direct action by the Council to remove obstructions and the decision to implement legal action up to and including prosecution where necessary.

Enforcement will be considered wherever appropriate powers exist to deal with actions or inactions that may lead to risks to the health and safety of the public or when highway rights are infringed.

2.1 Enforcement Principles There are four basic principles which underpin this policy:

- i. **Proportionality** - relating the enforcement action to the seriousness of the contravention. Some incidents may have the potential to place the public's health and safety at risk, whilst others interfere with people's enjoyment, their rights and HT Service's ability to carry out its activities. Enforcement action will be proportionate to the risks posed and to the seriousness of any breach of the law.
- ii. **Consistency** - undertaking a similar approach in similar circumstances. This does not necessarily mean 'uniformity' of action. When assessing a breach, Officers will need to exercise their professional discretion by taking into account all the relevant factors of the case. Cases must be dealt with by their own merits on a case-by-case analysis. Such relevant factors may include the severity of the breach, the impact or potential impact on the public, the behaviours of those responsible for the breach and the history of previous breaches.
- iii. **Transparency** - ensures that those against whom enforcement action is taken are aware of the legislative requirements and equally of the likely consequences of non-compliance. Distinction will need to be made between statutory requirements and what is good practice or desirable, but not compulsory. Transparency should aid those being regulated in complying with statutory requirements and minimise the need for further or continued enforcement action. It also helps maintain public confidence in the ability of the HT Service to fulfil its statutory duties. Where enforcement action is required an explanation will be documented (in writing) rationalising why action is proportionate, necessary and legally required. Unless urgent action is required, an opportunity will be provided to discuss what is necessary to comply with the law. Urgent action will

be taken where the safety of the public is paramount due to the circumstances. The enforcement policy must not fetter the Council's ability to take immediate action where and when required.

- iv. **Targeted** – ensuring that enforcement action is directed primarily to where the risks or impact on the public is greatest. Action will be focused on those directly responsible for the breach and who are best placed to control it. Prioritisation will be based on a number of factors including assessment of threat, risk, harm and impact on the public.

3.0 RIGHTS OF WAY ENFORCEMENT -

3.1 All legislation and common law powers and duties available to the Council for the enforcement of the Council's duties in relation to Public Rights of Way

[Examples of the applicable legislation/common law provisions] [the most common used provisions are] but are not limited to:

Highways Act 1980

- Section 130 – Protection of public rights
- Section 130A- Notices to enforce duty regarding public paths
- Section 131 – Penalty for damaging the highway etc.
- Section 132 – Unauthorised marking on the highway
- Section 134 – Ploughing etc. of Footpath or Bridleway
- Section 135 – Power to authorise works which may disturb a footpath or bridleway or restricted byway
- Section 137 – Penalty for wilful obstruction of the highway
- Section 137ZA – Power to order offender to remove obstructions
- Section 137A – Interference by crops
- Section 143 – Power to remove structures from the highway
- Section 145 – Powers as to gates across the highway
- Section 146 – Duty to maintain stiles and gates across the highway
- Section 147 – Power to authorise erection of stiles etc. on footpath or bridleway
- Section 148 – Penalty for depositing things or pitching booths etc. on the highway
- Section 149 – Removal of things so deposited on the highway as to be a nuisance
- Section 154 – Cutting or felling etc. of trees that overhang or are a danger to highway users
- Section 161 – Penalties for causing certain kinds of danger or an annoyance
- Section 161A – Danger or annoyance caused by fires lit otherwise than on highways
- Section 162 – Penalty for placing ropes etc. across a highway 3
- Section 164 – Power to require removal of barbed wire
- Section 165 – Dangerous land adjoining street
- Schedule 12A – Further powers in relation to interfering with highways

Additional Legislation

- Wildlife and Countryside Act 1981
- Public Order Act 1986
- National Park and Access to the Countryside Act 1949
- Local Government Act 1972
- Common law provisions in relation to nuisance and/or negligence

Future Legislation

Any legislation that is enacted subsequent to the publication of this policy, which either imposes a duty or a power on the authority to take enforcement action in regards to Public Rights of Way.

3.2 Guidance Documents

- DEFRA Rights of Way Circular (1/09)
- Gaps Gates and Stiles BS5709:2006
- Rights of Way Improvement Plan for Buckinghamshire
- The Code for Crown Prosecutors issued by the DPP under the Prosecution of Offenders Act 1985
- Central and Local Government Enforcement Concordat, March 1998

4.0 THE POLICY

Enforcement is directed towards (but not limited to) the following areas:

- Obstruction or unauthorised stopping up of the highway
- Restoration of highways lawfully ploughed
- Unlawful ploughing or disturbance of the highway
- Crops inconveniencing use of the highway
- Unlawful deposit of materials or structures in the highway
- Misleading notices on or near to a highway
- Overgrown hedges next to a highway
- Barbed wire next to a highway
- Enlargement of or removal of gates on footpaths or bridleways
- Other miscellaneous nuisances and obstructions

We The H T Service aims to:

- Take positive action to address problems as we the Service becomes aware of them
- Attach a timescale to resolution of an enforcement issue in line with those published in the Buckinghamshire Rights of Way Improvement Plan
- Ensure there is consistency and uniformity in our approach to enforcement and
- Prevent continuing or re-occurring offences as far as reasonably practicable.
- Assist, advise and provide practical assistance wherever possible to help farmers and landowners stay within the law.

5.0 THE ACTION

There are several possible courses of action available to us:

5.1 To Give Advice - Advice may be given when it is determined that the infringement is of a minor nature, and there is an agreement that the owner or occupier involved will take the required corrective action. The owner or occupier will be requested to take appropriate remedial action.

5.2 Enforcement Notices - A formal Notice may be served, dependant on the statutory/common law provisions used. If an offence has been committed (which will be decided on the facts) and where a request to take remedial action has failed, provided it is deemed that there is sufficient evidence to serve an enforcement notice. Such Notice will include provision for the Council to take direct action to remove obstructions or nuisances or to deal with the appropriate restoration of paths and to recover its costs as provided by the relevant legislation.

5.3 Prosecution - In some circumstances the Council will prosecute if it believes it to be in the public interest to do so and this may be undertaken in tandem with the service of Notices (as above). Prosecutions are an important part of our enforcement process. The Council will prosecute to provide a deterrent against offences being committed, but such action will only be taken when other attempts to secure compliance have failed., The decision to prosecute will be taken in accordance with legal advice regarding the facts of the case, the evidence available and with regard to whether there is sufficient admissible evidence to obtain a conviction.

Each case is considered on its merits. The appropriate authorised officer(s) of the HT Service will decide if the facts fall into one of the categories listed under the “The Policy” and also take into account additional factors which reflect the Code of Practice for the Crown Prosecution Service including “the full code test”.

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

Prosecution will be considered when:

- There is a significant risk to public safety – (which may or may not be possible for the Council to abate using direct powers)
- There is a flagrant breach of the law, or if notice has been given that legal proceedings will be considered for future breaches.
- There has been a failure to heed advice or instructions or take corrective action, or act on an enforcement Notice.
- There is a history of similar infringements.
- If the prosecution is in the public interest.
- Sufficient evidence to provide a realistic prospect of conviction.

Additional Considerations for prosecution:

- Is a conviction likely to result in a fine?
- What is the previous behaviour and/or record of the defendant?
- Is the Offence widespread?

Each case will be subjected to an ongoing process of review to ensure the level of enforcement action continues to be appropriate. Once the decision to prosecute has been made, enforcement action will be commenced without unnecessary delay.

6.0 PROCEDURE FOR ENFORCEMENT

6.1 Enforcement Procedure - As well as providing details of the policy to external partners it is also designed to be used by Officers of the Council when they have become aware of issues that fall within the scope, and to inform and guide when considering appropriate enforcement action.

Appendix 1 attached is an outline of the procedure followed by officer when considering proceeding to enforcement action.

6.2 Delegated Powers – All decisions pertaining to the authorisation of actions under this enforcement policy are set out in the Scheme of Delegations to officers, from the Service Director which gives a number of enforcement functions to officers as outlined in the table attached in Appendix 2.

6.3 Decision Making

All decisions pertaining to the authorisation of legal action under this enforcement policy are set out in the document, Enforcement Functions within the Scheme of Delegations (Rights of Way), abridged table in Appendix 2.

7.0 REVIEW

This policy will be reviewed whenever there is a significant change in legislation, national or local policy, or otherwise when deemed necessary. The contents of the policy may not definitively detail all courses of action available to the Council.

8.0 DIRECT ACTION

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

9.0 REGULATORS' CODE

The Legislative and Regulatory Reform Act 2006 requires local authorities exercising regulatory functions to exercise these in accordance with statutory principles and in accordance with the Regulators' Code 2014. Highway enforcement functions are included within the regulatory functions covered by this legislation.

The regulatory principles state:

- Regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
- Regulatory activities should be targeted only at cases in which action is needed.

The Regulators' Code requires that local authorities consider the following principles when setting policy and operational procedures:

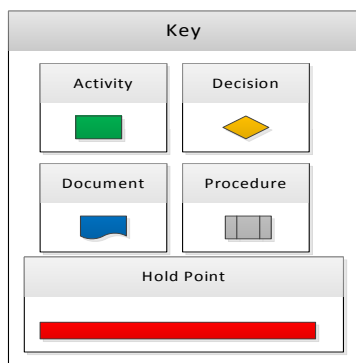
- Regulators should carry out their activities in a way that supports those they regulate to comply and grow
- Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
- Regulators should base their regulatory activities on risk
- Regulators should share information about compliance and risk
- Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
- Regulators should ensure that their approach to their regulatory activities is transparent

The Council has taken account of these principles when formulating its policy.

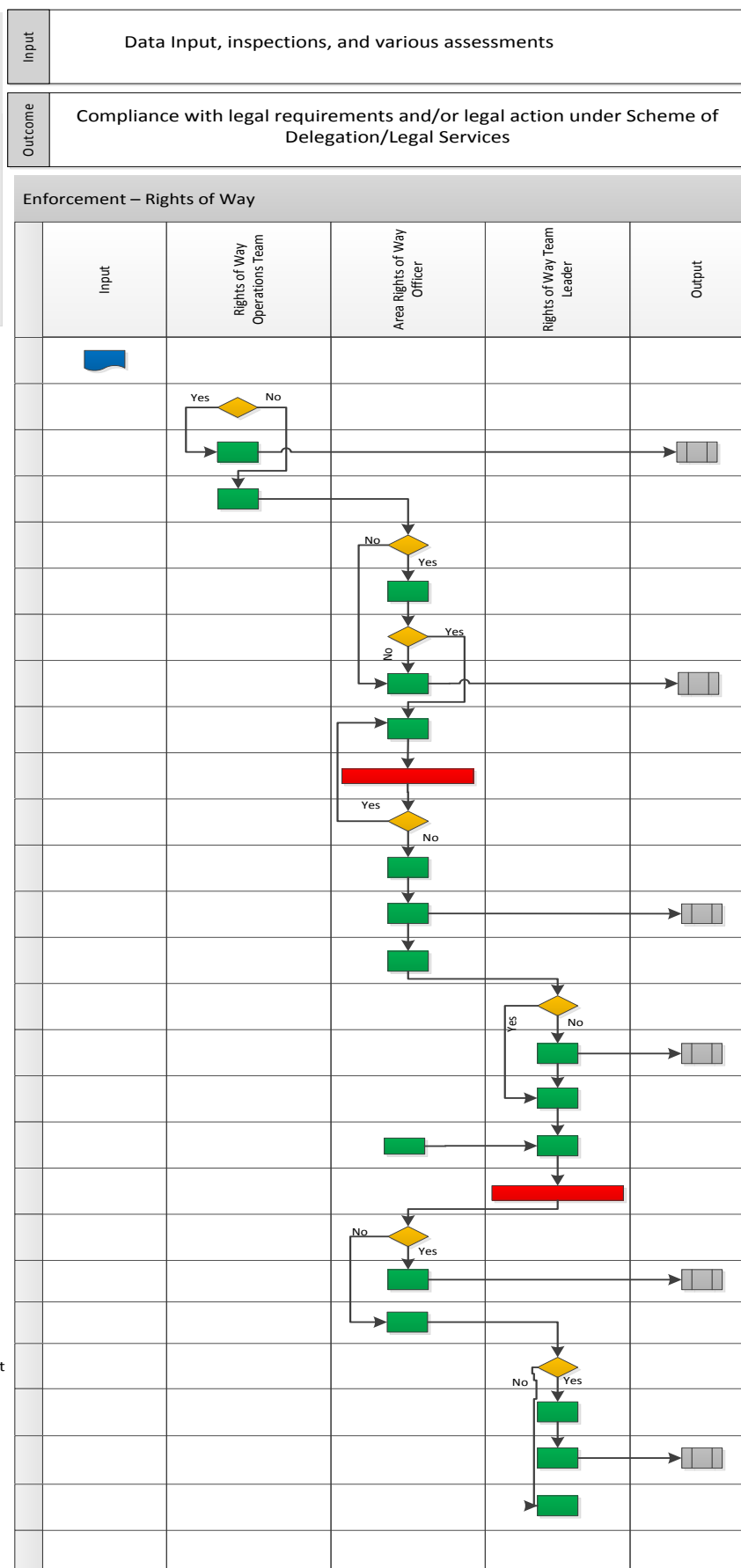
BUCKINGHAMSHIRE COUNCIL

Highways and Technical Services,
Communities

Procedure: Enforcement – Rights of Way



1. Customer Report in CAMS
2. Can issue be dealt with via standard letter?
3. Find owner or responsible person and write letter
4. Pass to AROWO
5. Does it need inspection?
6. Fit in site inspection/raise inspection sheet
7. Carry out site inspection is there illegality
8. Sign off/MONITOR CAMS/ALERT CUSTOMER TO FINDINGS
9. Make contact with person responsible and advise of offence and actions required
Hold for legal time limits up to 28 DAYS
10. Has person responsible responded
11. Carry out a site inspection is illegality still present?
12. NO – SIGN OFF ISSUE
13. Yes – Escalate to Team Leader
14. Is issue actionable under the highways Act 80
15. IF MAINTENANCE ISSUE or RoW gang can resolve
16. Advise AROWO on correct legislation review evidence
17. Raise Notice and Serve
Hold for legal time limits up to 28 DAYS
18. Carry out site inspection is issue resolved
19. Sign off CAMS/Alert customer to findings
20. Issue still O/S advise Team Leader
21. Can issue be resolved by work in default
22. Issue work instruction to RoW gang and attend site
23. On Completion of work close CAMS/alert customer
24. No Advise Legal Services of inaction - proceed to prosecution





Procedure: Enforcement – Rights of Way

Objective	Provide a streamline process for RoW Ops Team to observe, ensuring that issues are uniformly and consistently processed as far as practicable, in order to comply with duties under the Highways Act 1980.
Input	Data Input, inspections, and various assessments operate in parameters of Scheme of Delegation
Output	Compliance with legal requirements and/or legal action under Scheme of Delegation
Procedure Owner	Rights of Way Operations Team – Team Leader

1. Procedure	Customer Report in CAMS
Assume that the issue in CAMS has already been assessed through the Customer Reports Procedure, and that it is an issue RoW Ops has responsibility for, that the customer has been acknowledged and advised of procedure.	
2. Decision	Can issue be dealt with via standard letter
Either using templates, eg. Ploughing and Cropping or another standard obstruction letter, if yes go to 3. If no go to 4.	
3. Procedure	Find owner or responsible person and write letter
Find landowner using the Landownership process, then using the correct template write letter to the person responsible	
4. Activity	Pass to AROWO
Escalate Enforcement issue to the Area Rights of Way officer provide the relevant information	
5. Decision	Does it need inspection?
From the information within the report and reviewing the information contained in the database does this issue need inspection or has it already been assessed and found not to be an issue, or is it already a matter on 'monitor', if yes go to 6. If no go to 8.	
6. Activity	Fit in site inspection/raise inspection sheet
Raise an inspection sheet, including map etc	
7. Decision	Carry out site inspection, and assess compliance/continued presence of illegality
Attend the site, assess if the issue reported is the responsibility of the landowner and is the problem an offence. Would it be possible to resolve easily using in house RoW gangs. If on illegality go to 9 – If not go to 8	
8. Procedure	Sign off/MONITOR CAMS/ALERT CUSTOMER TO FINDINGS
Sign off the issue, and alert the customer to the findings and/or likely actions.	
9. Activity	Make contact with person responsible and advise of offence and actions required
Refer to point 3. Finding the landowner. Write to the person likely to be responsible, using an appropriate template if available, and advise them of the offence – ALERT them to the actual sections of the relevant Act, ensure that a time scale/limit is indicated in the letter, ensure that they are advised if relevant to RPA Area Payment Scheme.	
Hold Point	Hold for legal time limits up to 28 DAYS hold point
Hold for the period of time outlined in the letter up to 28 days	
10. Decision	Has person responsible responded
Has the owner responded, confirmed that the issue is resolved does it need a further inspection, go to 11. If they have NOT responded also go to 11. If they have responded but the issue is not their responsibility go back to 9 .	
11. Activity	Carry out a site inspection is illegality still present?



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Procedure: Enforcement – Rights of Way

Carry out a site inspection to assess if the issue is still a matter to resolve, if there is still an issue go to 13, if there is no longer an issue go to 12.	
12. Activity	NO – SIGN OFF ISSUE NFA
Sign off the issue as resolved and follow procedure for 19.	
13. Activity	Escalate to Team Leader
	Brief TL, provide relevant information, including history, photos, AMIAP!
14. Decision	Is issue actionable under the highways Act 80
Review relevant information and assess if issue is an offence that is actionable. If No and it may be resolved using the maintenance gangs go to 15. If Yes go to 16.	
15. Procedure	IF MAINTENANCE ISSUE or RoW gang can resolve
Issue an instruction to the RoW Gang to carry out works – NB only use this as an option following an assessment, is this the quickest cheapest option – It must not be setting a precedent, it must not resolve an unlawful structure.	
16. Activity	Advise AROWO on correct legislation review evidence for Notice
Review the evidence ensure sufficient to prove the offence and that it is complete. Advise Area Rights of Way Officer of legal action and relevant acts.	
17. Activity	Raise Notice and Serve by recorded delivery post.
AROWO to raise relevant Notice (Refer to Scheme of Delegation) - checked by Team Leader and signed, post notice to responsible owner – send by recorded delivery	
Hold Point	Hold for legal time limits up to 28 DAYS hold point
	Ensure that time limit is observed – in accordance with the correspondence/legal notice
18. Decision	Carry out site inspection is issue resolved
On expiry of time in legal notice carry out a site inspection, gather evidence, take photos, is the issue resolved satisfactorily, Yes go to 19 if No go to 20.	
19. Procedure	Sign off CAMS/Alert customer to findings
Sign off the issue, and alert the customer.	
20. Activity	Issue still O/S advise Team Leader
Advise TL of current situation, brief on any other information pertaining since 17 if any, provide new photos or evidence if available.	
21. Decision	Can issue be resolved by work in default
NB only use this as an option following an assessment, (is it necessary to delay work in default because of ground conditions, or crop rotation), if it is achievable go to 22. If it is not achievable or it is necessary to seek further legal advice go to 24.	
22. Activity	Issue work instruction to RoW gang and attend site
Raise the works instruction, and arrange with the gang to attend the site, ensure that a risk assessment of the site is completed, does it require a police presence, is owner likely to commit a breach of the peace or is there any possibility of an actual assault or verbal assault. On completion of the job go to 23.	
23. Procedure	On Completion of work close CAMS/alert customer
	Sign off the issue, and alert the customer
24. Activity	No Advise Legal Services of inaction - proceed to prosecution


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Procedure: Enforcement – Rights of Way

Review the case with legal services. Is further evidence required - (NB evidence should be gathered through all relevant steps, copies of letters and correspondence recorded both from the public and to and from the responsible person, photos taken during site visits and officer and file notes recorded). If it is not possible to carry out work in default through a legal notice, would prosecution resolve the issue. Consider calling person in for interview under PACE. AROWO to compile a report containing all evidence, photos, history of issue and actions taken. Send to Legal Services for review. Head of Legal Services to determine sufficient evidence to apply to Magistrates Court for prosecution.

Allocation of Roles and Responsibilities by Activity			Responsibilities						
			Assistant RoW Off.	Area RoW Officer	Team Leader	Legal Services			
1	Procedure	Customer Report in CAMS	R						
2	Decision	Can issue be dealt with by Standard Letter	R						
3	Procedure	Write letter to responsible person	R						
4	Decision	Pass to AROWO	R						
5	Decision	Does it need inspection		R					
6	Activity	Fit in site inspection/raise inspection sheet		R					
7	Decision	Carry out site inspection is there illegality?		R					
8	Procedure	Sign of/monitor CAMs/Alert Customer to result	R	R					
9	Activity	Contact responsible person and advise of offence		R					
	Hold Point	Hold for legal time limits up to 28 days							
10	Decision	Has person responsible responded		R					
11	Activity	Carry out site inspection is illegality still present?	R	R					
12	Activity	Sign off issue NFA		R					
13	Activity	Escalate to Team Leader		R	R				
14	Decision	Is issue actionable under legislation		R	R				
15	Procedure	If maintenance issue or RoW gang can resolve	R	R					
16	Activity	Advise on correct Legislation-review evidence		R	R				
17	Activity	Raise Notice and Serve by recorded delivery post		R	A	C			
	Hold Point	Hold for legal time limits up to 28 days							
18	Activity	Carry out site inspection is issue resolved		R					
19	Procedure	Sign of CAMs/Alert customer to findings		R					
20	Activity	Issue still o/s advise Team Leader		R	A				
21	Decision	Can issue be resolved by work in default?			R				
22	Activity	Issue work instruction to gang and attend site		R	A				
23	Procedure	Completion of work close CAMs/alert customer		R					
24	Activity	Advise legal services – prosecution		R		C			



Procedure: Enforcement – Rights of Way

Key:

- R** = Responsible (person who owns the task and does the activity)
- A** = Accountable (person who is accountable for making sure the activity is done, often the person R reports to)
- C** = Consulted (person who should be consulted and/or has information or capability required for the completion of the task)
- I** = Informed (person should be informed / notified of results but does not need to be consulted)

Enforcement Functions within the Scheme of Delegations

Function delegated to Head of Service and/or Team Leader	Act
Duty to assert and protect the rights of the public to use and enjoyment of highways	Section 130 of the Highways Act 1980
Duty to serve notice of proposed action in relation to obstruction	Section 130A of the Highways Act 1980
Power to authorise temporary disturbance of surface of [footpath, bridleway or restricted byway]	Section 135 of the Highways Act 1980.
Functions relating to the making good of damage and the removal of obstructions	Section 135B of the Highways Act 1980
Powers relating to the removal of things so deposited on highways as to be a nuisance	Section 149 of the Highways Act 1980.
Power to Apply for an enforcement notice order against works on common land	Section 41 of the Commons Act 2006
Power to protect unclaimed registered common land and unclaimed town or village greens against unlawful interference	Section 45(2)(a) of the Commons Act 2006
Power to institute proceedings for offences in respect of unclaimed registered common land and unclaimed town or village greens	Section 45(2)(b) of the Commons Act 2006
Grant of an extension to the disturbance of highway	Section 34(8) of the Highways Act 1980
Service of enforcement notice to secure cutting of hedgerow	Section 154 of the Highways Act 1980
Service of enforcement notice on landowner for structures out of repair	Section 146 of the Highways Act 1980
Service of notice to secure removal of obstructions on highway	Section 143 of the Highways Act 1980
Service of notice to secure removal of crops on [footpath, bridleway, restricted byway] and carry out works to make good the route	Schedule 12A of the Highways Act 1980