**OVERVIEW OF LEGAL FRAMEWORK THAT CROWS OPERATE WITHIN**

There are many laws relevant to public rights of way, and this is only a brief guide. The information does not apply to paths that are not public rights of way.

**DEFINITIONS**

The most Important fact to know about public rights of way is that they are part of the Queen's highway, and are subject to the same protection in law as a trunk road.

**Footpath**.

This is a highway over which the public have a right of way on foot only. It is also permitted to push a pram, pushchair or wheelchair, although this may not be practical clue to the type of surface, slope or stiles.

**Bridleway**.

This is a highway over which the public have "a right of way on foot, on horseback, leading a horse, riding or pushing a bicycle, by wheelchair or

pushing a pram.

**Byway open to all traffic**.

This is a highway over which the public have a right of way for vehicular and all other kinds of trafﬁc, but which is used mainly for the purpose for which footpaths and bridleways are used. Most do not have a surface suitable for ordinary motor traffic. These are rare in our area.

**Statutory law**.

This is written law, made by a legislative authority. Statutory rights of way are those whose status was conﬁrmed following the National Parks and Access to the Countryside Act 1949, or those created by an Order.

**Common law**. This is unwritten or customary law, based on judicial decisions. Common law rights of way are those used by custom, although in the case of dispute, the existence of this common right may have to

be decided in a court of law.

**Orders**.

Orders are made by Calderdale Council or the Secretary of State for the Environment, for the creation, diversion or extinguishment of public rights of way. They usually arise through the request of the landowner. Extinguishments can be made if the local authority considers the path is no longer needed for public use. The grounds for diversion are that it is in the interests of the owner, tenant or occupier, or of the public, and that it is not substantially less convenient to the public. The effect on public enjoyment of the path as a whole must also be considered.

**Definitive maps**.

The Deﬁnitive map for each county is the result of the surveying and recording of public paths required under the National Parks and Access to the Countryside Act 1949. It is conclusive evidence in law as to the course of a public right of way. However, the absence of a path from the deﬁnitive map is not conclusive proof that it is not a right of way. Nor does the status shown preclude the existence of higher rights.

The information is shown on a map with descriptions of the paths in an accompanying statement. The local Deﬁnitive map is available for consultation by the public at Council offices (CROWS has copies). The map is updated to show the results of conﬁrmed Orders, or changes in a path’s status or existence resulting from documentary or public evidence. The information is included on Ordnance Survey maps and the Council’s on line mapping system as these are updated.

**MANAGEMENT AND MAINTENANCE**

Footpaths, bridleways and byways are said in law to have been ‘dedicated’ to the use of the public by the owner of the land they cross. Very few have been formally dedicated, most being ’presumed dedicated’ because the public have used them uninterruptedly for at least 20 years.

As most rights of way are 'maintainable at public expense’, the surface (the top two spade depths or so) is owned by the highway authority. The highway authority is Calderdale Council for our area.The highway authority is ultimately responsible for ‘asserting and protecting the rights of the public to the use and enjoyment’ of paths in their area. Parish Councils may take over some of the responsibilities outlined below (this has not happened in our area as far as we are aware).

Voluntary groups who want to work on public rights of way must arrange to do so with the relevant authority, who is then responsible for dealing with any claims for damages which may arise. The land owner must also be consulted either by the authority or directly by the group. The

procedure depends on the system operated by the particular local authority.

There is no set standard to which rights of way have to be maintained, but they are required to be in a condition appropriate for their expected use, with reasonable care being taken by the highway authority to ensure that they are safe. On tenanted land, the landowners' responsibilities outlined below become those of the tenant or occupier.

**Surface**

The local authority is responsible for the maintenance of any surface, such as Tarmac, gravel or chippings, overlaying the soil of the path. Ploughing and other cultivations, and any farming activity that causes problems of drainage are the responsibility of the landowner.

There is a statutory right to plough any footpath or bridleway which crosses a ﬁeld. Footpaths and bridleways along the edges of ﬁelds and all byways open to all traffic never have a right to be ploughed. Prosecution can be brought by a local authority against anyone who ploughs a footpath or bridleway without a right to do so.

If a footpath or bridleway crosses a ﬁeld, the farmer is entitled to plough or disturb it when necessary to sow, cultivate or harvest a crop. He must then restore the surface of the path to make it reasonably convenient for walkers and riders to use, and to make sure that the line of the path is, and remains, clear on the ground. Normally this must be carried out within 24 hours of the start of the disturbance.

For rights of way across a ﬁeld, the minimum widths are 1m for a footpath, 2m for a bridleway, and 3m for byways. For field edge paths, the widths are increased to 1.5m, 3m and 5m respectively. These rules only apply for paths restored after ploughing or kept clear of crops, and do not apply generally to rights of way.

**Growth**

The local authority is responsible for clearing any growth, except a crop, from the surface of the path. This includes, for example, nettles or bracken which grow in the line of the path and block it. Any overhanging growth from trees, hedges, shrubs, nettles or other herbaceous plants adjoining the path is the responsibility of the landowner. The local

authority can require the landowner to carry out this work, and it necessary, can do it themselves and recover costs.

Set—aside land is considered still to be in agricultural use. Natural regeneration along paths which mainly comprises regrowth from the previous crop should be cleared by the landowner. Natural regeneration of grasses and plants not sown by the landowner should be cleared by the highway authority.

**Stiles and gates**

Stiles and gates on footpaths must be maintained by the landowner in a safe condition, and to a standard which does not make an unreasonable interference to the rights of users. A minimum 25% grant must be contributed by the local authority towards the cost of erection or maintenance of a stile or gate if the owner requests it. If the owner does

not properly maintain the stile or gate, the highway authority can require the work to be done, or carry out the work itself and recover its costs. In practice, many authorities provide a stile or gate kit at no cost to the owner, which the owner or volunteers then install. An owner wishing to

erect a stile or gate on a right of way where none existed before must apply to the highway authority for consent.

**Bridges**

The local authority is usually responsible for the maintenance of bridges on rights of way. The landowner must provide adequate bridges where new ditches are made or existing ones widened. Bridges that cross canals or railways are maintainable by the canal owner or the railway company.

**Signposting and waymarking**

The highway authority is required to signpost all junctions of footpaths, bridleways and byways with tarmac roads. The sign must state whether the path is a footpath, bridleway or byway, and may give a destination and distance (these are usually metal ‘flag’ posts).

Waymarking is marking of a path along its route. The recommended system uses yellow arrows for footpaths, blue for bridleways, and red for byways. The highway authority is required to waymark those rights of way where, in the authority's opinion, it is necessary to help anyone unfamiliar with the locality to follow the route. Signposts and waymarks are protected as ’traffic signs’, and it is an offence to remove or obliterate them.

**Access for maintenance**

The regulations prohibiting vehicles on footpaths and bridleways do not apply if the highway authority (or the group acting as agent for it) need access by vehicle for maintenance or improvements to be carried out. The

highway authority is liable if any damage to the landowner‘s property occurs.

**OBSTRUCTIONS**

Obstructions can include a barbed wire fence, a heap of manure or a standing crop. The local authority can order the landowner to remove the obstruction, or remove it themselves and recover costs. A member of the public is allowed to remove as much of an obstruction as is necessary to get past it, but must be a bona fide traveller, and not have gone out with the specific aim of removing the obstruction.

**Misleading signs**

it is an offence for anyone to put up a sign or notice containing false or misleading information likely to deter people from using a public footpath, bridleway or byway, provided the right of way is shown on the definitive map. The highway authority is responsible for enforcing this legislation.

**Bulls**

Bulls should not be kept in ﬁelds crossed by public rights of way unless they are under 11 months old, or are of a beef breed and accompanied by cows or heifers. Thus, bulls of dairy breeds (Ayrshire, British Fresian, British Holstein, Dairy Shorthorn, jersey, Guernsey and Kerry) must not be in fields crossed by rights of way unless they are under 11 months old.

**USE**

It is a statutory offence to drive a vehicle along a bridleway in the absence of a private right to do so. it is not a statutory offence to ride a horse or a bicycle along a footpath, unless there is a bye-law or a traffic regulation order prohibiting that activity, but a person doing so without the permission of the landowner commits a civil trespass, and the landowner can order them off, and where appropriate, sue for damages. All the rules and regulations that apply on other highways also apply on rights of way.

It is an offence to cycle on a bridleway or byway either recklessly, carelessly or without consideration for other users. Vehicles used on byways must be properly taxed, registered and insured.

As public rights of way are by definition highways, they can only be used for bona ﬁde journeys. The traveller can do anything reasonably ancillary to the journey, such as pausing to look at the map, or sitting down for a rest, but any activity not directly referable to the right of passage can be an act of trespass. One example of when a landowner successfully sued for trespass was in 1900, against a journalist who walked up and down a right of way taking notes on the performance of racehorses training on the adjoining ground. Although this may seem trivial, it does underline the limit to the public’s use of a right of way. It is, as the name describes, only the right of passage.

**Trespass**

It you enter someone else's land without permission or right to do so, such as right of way, this is trespass. There are also conditions attached to the public’s use of the land, and if you contravene these you will be trespassing. if you do trespass, it is only in exceptional cases a criminal offence (railway and Ministry of Defence land), although if you cause loss or damage you can be prosecuted.

If you trespass and a landowner asks you to leave or to return to the right of way, you should do so, and you must be allowed to do so freely. If a trespasser fails to leave when asked, depending on the circumstances, reasonable force may be used to make them leave.

Under the Criminal justice and Public Order Act 1 994, the offence of aggravated trespass has been created. A person may commit this offence if they trespass on land in the open air with the intention of disrupting someone else’s lawful activity. Time will tell whether there are any circumstances in which genuine walkers may put themselves at risk of

prosecution.