



Authorising structures on public paths  
Policies & Practices  
SURVEY

**The response of Highway Authorities**

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### Introduction

The Open Spaces Society has always worked with government, we have helped change laws. We worked with parliament and the city of London Corporation in the 19th century to achieve land management and access reforms, we worked with the Board of Trade during definitive map introduction in the mid 20th century and with the Countryside Commission at the end of the century for the new standards for path structures. These structure standards, BS5709 and BS4008, aim to reflect government policy of 'least restrictive access' which runs in parallel with the access implications of the Disablement Discrimination Acts of 1995 and 2005.

Most recently we served on a working party to assist Defra in drawing up guidelines for local authorities regarding structures on paths, due to be published soon. The information provided by local authorities to us in the survey summarised in this paper was of significant help to that working party.

Many local authorities have been reviewing their policies on path structures, especially gates and stiles. But, due to the lack of any general guidance, these policies sometimes differ substantially from each other. Besides the obviously important issues of physical construction of path structures, the various means of authorisation of these structures are being addressed. Some authorities, as well as drawing on their own expertise, have made use of material from others who have pioneered formal policies. All this with little official overall guidance so far.

The survey summarised in this paper was intended not only to deal with treatment of new structures in orders and authorizations (eg HA80 s147) but to cover the issue of structures, often stiles, that have been in place for some time and which are either unauthorised or no longer necessary for their original purpose, usually control of stock animals. The Open Spaces Society passed a resolution at our 2007 AGM addressing this issue. That resulted in our initiating a survey of all local authorities with the results summarised in this paper.

In reply to our questionnaire, some authorities gave us copies of, or links to, some other material, but it does not lend itself to classification or summary so is not covered here. The majority of authorities, disappointingly, requested anonymity.

Note: the OSS has an information sheet, numbered C18, entitled *Removing and improving path-paraphernalia*, on our website at [www.oss.org.uk/publications/free-publications/](http://www.oss.org.uk/publications/free-publications/) which includes information and some ideas pertinent to the law and practice of path structures. It includes *Understanding the British Standard for gaps, gates and stiles* which is also available on-line at [www.pittecrofttrust.org.uk](http://www.pittecrofttrust.org.uk).

## **Background and overview**

The survey was originally sent to all local authorities whether highway authorities, agencies or neither. We sent out 400 forms and got back 42. A few were sparsely completed and response from non-highway-authority authorities was very low. We had 32 responses from authorities claiming to be highway authorities and we believe this to represent about 30% of the total of that category. We only heard from 10 non-highway-authority ones, far too small a proportion for firm conclusions. A little over half of all those who replied asked for anonymity (only one replied anonymously) so we have avoided attributing to particular authorities. Nine wrote to say they wouldn't be replying, all these were non-highway-authorities.

The forms used were substantially as on the last four pages of this document but instead of the ticks or crosses of their responses, we have inserted on those pages a figure indicating the percentage of respondents who ticked or selected those boxes.

These figures are the bare bones of the survey responses, not only were the open-comment boxes often completed, but a number of authorities sent in addition copies or internet URLs of their policies/practices on orders and on s147 permissions.

## **Topic related results from Highway Authorities**

### **Specifying structures in orders.**

78% use the traditional format of 'A [gap/gate/stile] at point X' with no further specification.

6% add to these words a local specification.

9% add the British Standard specification

One authority specifies a commercial catalogue item. Some of the local specifications may in practice be catalogue items.

10% prefix their words with words such as 'Subject to the right of the owner/tenant to erect and maintain...'

### **Choice of using order or HA80 s147 (or other means) to legitimise structures.**

The law is not clear to many people. It has not been customary to make structures in orders conditional for whatever reason that may have been. Nor was it customary to make s147 permissions conditional except in a limited sense, despite the word 'conditions' appearing in the legislation. A missing 'and' in the second edition of Rights of Way, A Guide to Law and Practice (Riddall and Trevelyan) HA80 s147 text was partly the cause of the latter. Despite this, where a structure could be authorised either through orders or through s147 then 6% chose s147, 24% chose sometimes one and sometimes the other and 48% chose to use an order.

Authorities were asked to suppose that structures in orders were non-rescindable and that s147 ones were rescindable and they were then asked to weigh the benefits of rescindableness against the added public scrutiny afforded by the use of orders. About 38% considered non-permanence more important than public scrutiny, 20% did not consider non permanence more important and 36% didn't know. It may be that this rather complicated question was not put well or not well understood, or both, so the figures may not be very informative. It seems likely that the expected Defra guidance (see above) will address this question.

**Can limitations in orders be revokable?**

If limitations in orders were shown to be able to be revokable, then 39% would expect to make them revokable, 6% would not and 45% didn't know.

When asked if they ever made structures modifiable or revokable, 9% said yes, 63% said no and 12% didn't know.

**Highways Act 1980 s147 authorisations (page 6)**

**Policy?**

Only 21% of authorities had a policy for such authorisations, but 57% had a standard form for applicants.

**Least restrictive?**

63% require the least restrictive structure.

**Standards?**

42% require compliance with British Standard BS5709 and 30% with other standards.

**Subsequent withdrawal of permission:**

# 51% reserve a **general** right to withdraw the permission. Such a right is different from making the structure conditional eg to tie open a gate when there are no animals using the field, see 'conditions' below.

# 54% reserve the right to withdraw it if (eg land use) changes occur.

# In practice 39% have sometimes withdrawn permission, 3% often do so.

**Conditions**

Besides the conditions above, some 24% impose other conditions not relating directly to the structure itself. These may include, for example, the obligation to remove a gate if stock is not using a field for some specified period.

**HA80 s147ZA improvements for persons with mobility problems.**

And as to the use of s147ZA, negotiating a less restrictive structure, which has been in force in England about a year, in Wales a little longer, 15% said that they had already used that provision

July 2009

# Authorising structures on public paths Policies & Practices - a questionnaire

for Highway Authorities & other Authorities involved in path orders

The bold figures in the boxes represent the percentage of highway authorities who ticked or selected those boxes.

## Background

Path structures, as 'limitations' on the full unfettered way, and in particular Gaps Gates & Stiles, have in recent years gained a lot of attention. Causes include:

1. The government policy of 'Least restrictive option'
2. The two Disability Discrimination Acts of 1995 and 2005
3. The publication of the completely revised British Standard BS5709 for Gaps Gates & Stiles in 2001 and 2006
4. Various other reinforcing initiatives such as 'walking for health'

The Open Spaces Society has assisted some highway authorities in their work relating to structures and we feel that one particular matter warrants the identifying of good practice and its circulation to Highway Authorities and other organisations and individuals involved. That matter is the authorising of structures on public paths; policy and practice.

For simplicity we focus on Gaps and Gates and Stiles and similar structures, but much would apply to other structures too.

We intend to make available a summary of our findings - it will not cite specific authority names unless you authorise us to do so.

Whilst completing the form please feel free to write in, or attach, additional comment whether relating to your response or to the form or content of our questions. But please omit questions only if you really must.

## Setting the Scene

# Are you willing to have replies attributed to your authority in our summary of results or do you request anonymity? OK to attribute **39** anonymity please **48**

# Name of your authority

# Are you a highway authority (HA)? yes  no  # a surveying authority? yes  no

# Are you an agency of either? for HA work  for surveying authority work

# something else?

# May we please have one or more contact names in case of query:

Name	phone/email
Name	phone/email
Name	phone/email

The bold figures in the boxes represent the percentage of highway authorities who ticked or selected those boxes.

This page applies to all authorities.

## Structures in Orders. Town and Country Planning Act 1990 & Highways Act 1980

### Words.

Where a structure is authorised in an order, what words do you typically use?

Please tick all that you use, even if not exactly the same exact words as here.

A gap/gate/kissing-gate/stile at point X **78**

A gap/gate/kissing-gate/stile at point X to YY Council standard **6**

A gap/gate/kissing-gate/stile at point X to British Standard 5709 **9**

A structure to British Standard 5709 **0**

Any other form of words? **1** authority quotes a commercial catalogue item  
if so please specify

In an order do you normally prefix those words with words such as 'Limitations: subject to the right of the owner/tenant to erect and maintain...'? yes **10** no **66** don't know **9**

**Order or HA80 S147?** Where a structure may either be included in an order or authorised by a S147 approval [from a highway authority or agent if you are not one yourself] do you include such a structure in the order? no **6** sometimes **24** yes **48** don't know **15**  
Any comment on that?

Structures as limitations in orders may be permanent so users may have to put up with the structure for ever, S147 approvals are rescindable. But limitations in orders are subject to public scrutiny and objection, whereas S147 approvals are not. In that context do you consider non-permanence more important for the public than scrutiny of the order? yes **38** no **20** don't know **36**  
Any comment?

**Can limitations in orders be revokable?** If you have an informed legal view we would be glad to hear it, but we are not actually putting that question. But we do ask this: if limitations in orders were shown to be revokable if suitably specified, would you expect to make them revokable in most orders unless there were quite strong reasons not to? yes **39** no **6** don't know **45**

Any further comment on this issue?

An example of a modifiable, though not fully revokable, structure would be: 'Subject to the right of the owner to erect and maintain a gate at point X, that gate to be to as specified from time to time by the highway authority.'

Do you ever make the structure modifiable or revokable?

yes **9** no **63** don't know **12**

**Authorities who are not highway authorities or their agents and do not maintain paths under the Highways Act 1980 S42 should omit page 3 and continue on page 4.**



The good.....

The bold figures in the boxes represent the percentage of highway authorities who ticked or selected those boxes.

This page only applies to highway authorities and other authorities holding an agency agreement for rights of way under LGA 1972 S101 or who have exercised Highways Act 1980 S42 powers.

### Highways Act 1980 Section 147 authorisations

#### Authorising under S147

# Have you published a policy for these authorisations? yes **21** no **63**

# If you are an agency, do you work to someone else's policy? yes  no  n/a

# How might we get a copy of any policy?

# Do you use a standard form for applying for authorisation under S147? yes **57** no **33**

# Is it available on line? yes **14** no **33** if yes, what is the URL (web page address)?  
if no, may we have a copy with this survey form.

# Have you used S147ZA yet to improve accessibility of a S147 structure? yes **15** no **54**

#### Standards & controls

# Do you have a policy of requiring the least restrictive structure? yes **63** no **21**

# Do you require S147 structures to comply with British Standard 5709 (Gaps Gates & Stiles)?  
yes **42** no **36**

# and/or with any other standards? yes **30** no **36**

# if yes then please indicate what standards

# Do you reserve a general right to withdraw the permission? yes **51** no **24**

# Do you reserve the right to withdraw the permission if the land use changes? yes **54** no **27**  
(e.g. from Dairy to Arable)

# Do you in practice withdraw permission? never **36** sometimes **39** often **3**

#### Other conditions

S147 (2) allows conditions to be applied 'for the right of way to be exercised without undue inconvenience to the public'. Whether or not you specify the least restrictive option and/or specify compliance of the structure with any standard, you can probably apply other conditions. Perhaps increasing manoeuvring space at the structure, or removal of a redundant structure on the same path, or somesuch. Do you ever impose such conditions?

yes **24** no **33** occasionally **27**



.... the bad ....

The bold figures in the boxes represent the percentage of highway authorities who ticked or selected those boxes.

This page applies to all authorities.

This page has no relevant figures on it, but is included for completeness

### Dealing with long-standing structures across public paths

We think that increasingly various authorities are setting out to remove or to authorise or to improve structures (often stiles) that have existed for a long time. These structures may be legal, a restriction at first dedication; or illegally added since. And often it is not clear which. Authorities' practice seems to vary from formal to informal, from tough to laissez-faire. An overview should be helpful to many. Authorities which are not highway authorities or agents may well have some policy concerning the improvement of path structures in their Local Plan or Local Development Framework. So please would all authorities outline their policy and practice for dealing with existing (and new) structures across public paths, either in the box below, or by attaching any written policy or guidance, or by giving a web site link.

### Other Structures/other Orders.

This survey inevitably omitted some peripheral topics such as the use of Highways Act S66 by highways authorities for erecting structures for path user safety. And omitted structures in definitive map orders, though these are not exactly being 'authorised'. And of course bridges, steps, benches etc. Is there anything else you would like to draw to our attention?

### And finally...

If you have other relevant information or views we would be glad to hear of them. Also references to any other relevant on-line or off-line documentation of your policy or practice relating to path structures. Contacts: 01491 573535 or [hq@oss.org.uk](mailto:hq@oss.org.uk)

### THANK YOU FOR YOUR HELP

Please return this form to us at:  
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