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INFORMATION SHEET C18

REMOVING AND IMPROVING PATH-PARAPHERNALIA

Notes for the December 2014 version

Minor changes to text

Inclusion of reference to the Kidner case,

Links to the Defra Equality Act guidance and some other material

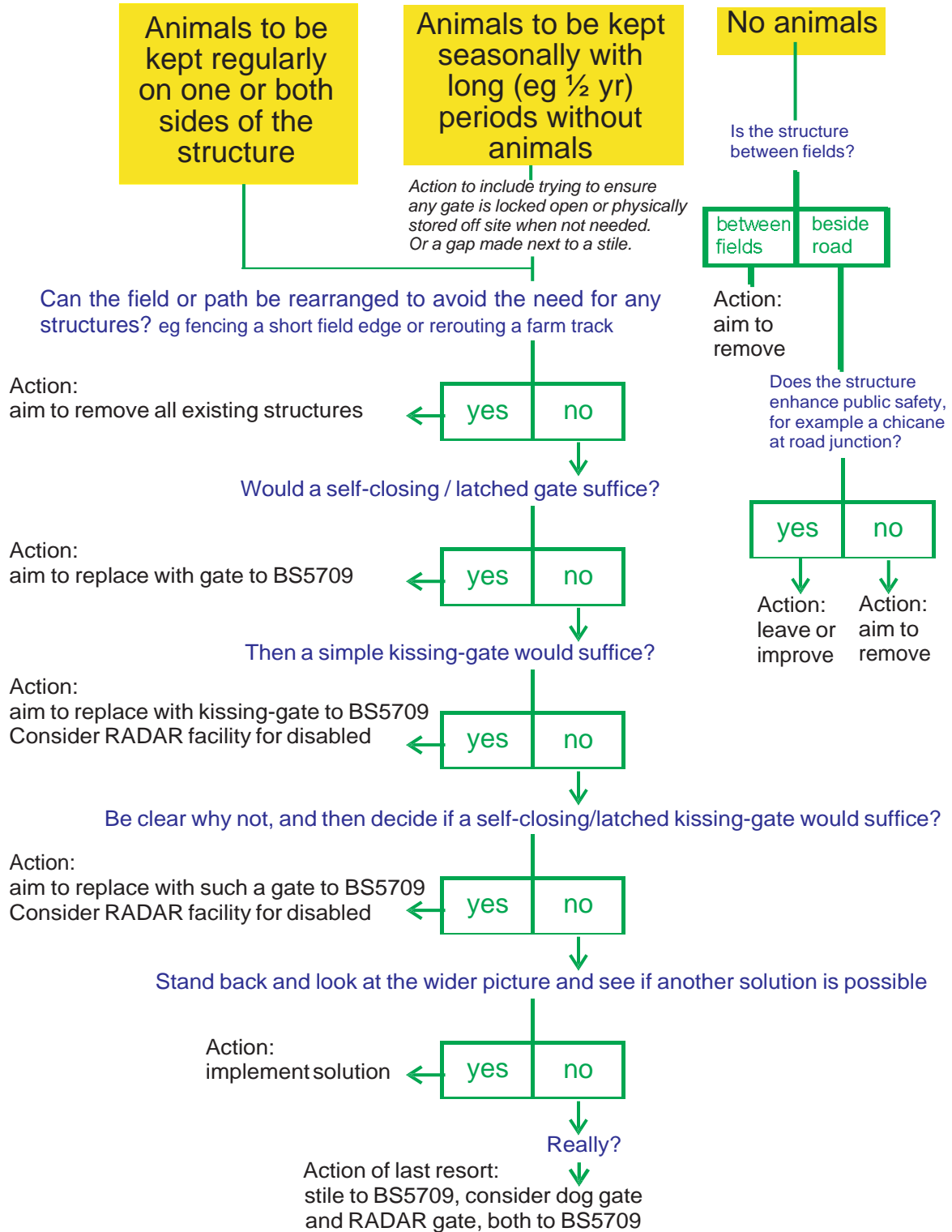
previously:

Figure 10, concerned with the improvement of structures by agreement under HA80 S147ZA, has been modified to reflect the coming into effect in England in late 2007.

There is no Fig 8 at present.

Improving path structures: consider the need

Decision tree (excludes brand new applications for structures)



Note: if the structure is currently unlawful, the highway authority can insist on change. If the structure is currently lawful, or would be lawful if repaired, the highway authority can persuade, or use HA80 S147ZA

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REMOVING AND IMPROVING PATH-PARAPHERNALIA

INTRODUCTION

1. The Open Spaces Society has always encouraged easy access to paths and countryside. Structures in hedges and walls can all too often make this access difficult, and sometimes impossible.
2. Many such obstacles are no longer needed, indeed many are not even authorised, but they remain.
3. It is surprising how often these substandard or redundant stiles and gates are neither improved nor removed.
4. Heritage. We recognize, of course, that features which are a part of our heritage, for example some historic stone-steps and squeeze stiles, should be left as they are.
5. We support government policy of the ‘least restrictive option’.
6. We worked with farming, landowning, government, and user bodies to produce the 2001 and 2006 versions of the British Standard for structures on public paths (BS5709:2006). We are working on the 2015 revision of that standard.
7. This information sheet is aimed at assisting those who share our goal of reducing unnecessary and undesirable structures from our public paths. It applies throughout England and Wales.

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References eg **HA80 s147** are to sections of the Highways Act 1980, **WCA81** to the Wildlife and Countryside Act 1981. Text and commentary on such legislation may be found in *Rights of Way. A guide to law and practice*. See ‘further reading’ at end of this information sheet.

Amendments: we may publish amendments to this document from time to time at www.oss.org.uk on the publications page.

Removing and improving path paraphernalia – figure 2

Some bits of path paraphernalia



←Structure at arable field. This is untypical only in that there is no difficulty bypassing it. That is very often not the case.

photo MW



Not a nice path. Rhodesian Ridgebacks, and they bit the fencing contractor. The issue was resolved by dogs (and tenant) leaving the area. The highway authority eventually organised a kissing gate. The path leads to a viewing platform. The new gate has official plaque 'please keep dogs under close control'. Ironic.



Some structures are clearly not needed; here time and use seem to be doing their stuff. Entropy at work.

Why remove or improve?

8. There is a large class of people who, while not classed as *disabled*, nevertheless have some kind of difficulty with many path structures. Structures with steps (stiles) are most troublesome, sometimes delaying groups of people out walking quite excessively, sometimes just discouraging individuals. But many (stepless) kissing gates can be troublesome too, with difficult latches and too little space for rucksack users, and sometimes impassable for children in buggies, whether the buggies are town or cross-country type.

9. There is nowadays a pretty general agreement by both government and people that the policy should be for the **least restrictive structure** needed to perform its function.

Identifying the structures

10. This information sheet is written around the needs of those who wish to remove or improve a modest number of particular structures, by providing background information and a few ideas. Those who wish to

The wider picture

Local Development Plans can help prune path-paraphernalia but this is a plan-ahead area. If a local authority has a clear policy of enhancing sustainable public access in its development plan, then when any land development takes place there is an opportunity to improve any local paths affected by it and/or to provide funds to improve paths in the general area of the development.

Getting involved at plan consultation stage might get policies that can be used later. A few extracts from current (old regime) plans are in annex 5.

tackle whole areas, parishes or boroughs, clearly will need to organise their work quite formally, for example by holding data in spreadsheets or databases.

11. Barring the occasional barbed-wire fence hidden in an overgrown hedge, path structures are usually visible, sometimes all too much so. But while they can be recognised they are not always easy to describe to others. *The sort of stile without steps about half way between Green Road and New Farm* may be unambiguous to you, but not to others, especially if there are several paths or several field boundaries along the path. Grid references are pretty essential and can be transmitted by speech, or by printed or electronic writing. It is definitely worth mastering these if you can. For those not already familiar with grid references there are various guides available on line, but for your convenience we have attached a simple guide at annex 1. Probably the best map to use for this is the Ordnance Survey Explorer Series whose 1:25000 scale shows field boundaries clearly.

Or of course use a Global Positioning System (GPS) hand held device and just press the button...

12. You now can tell people where it is. How do you tell them why it needs changing? Well you don't have to, you can just charmingly request or forcefully demand (whichever you are best at) that the structure must go. Get some friends to shout too and nobble a few local councillors, especially county or unitary

Removing and improving path-paraphernalia - figure 3

STRUCTURES: LAWFUL or UNLAWFUL?

As always with legal things there are no certainties. This note serves only to give a general outline of the status of path structures.

It is generally unlawful to erect any structure on a public path. The public has a right in general to use the whole width of a path and a structure is seen as a denial of that right. It is a crime, being a common law nuisance, as well as a statute law offence under Highways Act 1980 s137.

And for the great majority of paths (all those maintainable by the highway authority) an unauthorised structure is also a trespass against that authority.

All these allow legal (or sometimes direct) action to get these structures removed or improved.

There are two main classes of exceptions where the structure is lawful:

1. Where the original dedication (whether 'implied' or written) of the path as a public path was subject to having certain structures in it, and
2. Where lawful authority has subsequently been given for a structure.

1a. Original implied dedication.

One of the most common ways of paths being dedicated is where they just got used by the public for so long that everyone took them to be public. The law supports that and says a public right is thereby created: 'implied dedication' or the '20-year rule' Such a path will be subject to any structures that were there during that establishing period. No more onerous (to the public) structure can have been put in the path subsequently without explicit authority.

1b. Original written dedication

A path dedicated in writing will be subject to any structures mentioned in that dedication and no other and no more onerous than that. While it is just possible that the courts, if asked, might in rare circumstances imply structures, it is normally safe to assume that what is written is all that can be there.

2. Lawful authority given

Structures can be lawful if listed on confirmed diversion and other path orders.

Structures can be explicitly authorised on agricultural land if, for efficient use of that land, it is expedient to prevent passage of animals. Highways Act 1980 s147. The highway authority should hold a list of such authorisations. See figure 3 Approval of structures for agriculture.

Structures on the definitive map and statement² are only considered to be authorised if they are stated to be limitations on the public use. Thus if a definitive statement says *stile at first hedge* that is unlikely to give any authority for that stile (especially if it is a bridleway, such things have happened!). Where it is listed as a limitation it will often have been as a result of a modification order, though sometimes of a diversion or creation order, and the original order may have more detail.

Structures, even when listed as limitations, can be challenged by definitive map claims under WCA81. And two less significant authorities:

Highway authorities can put up structures for public safety under HA80 s66. This has been used to erect gates. It is a little doubtful if the earlier wording *barrier, rail, or fence* (for public safety) strictly covers gates and the CROW Act 2000 could be seen as supporting that view by adding *posts* and not adding *gates*. In any case the authority who put it up can take it down, [HA80 s66(4)].

A council may place objects or structures on a highway for the purposes of giving effect to a pedestrian planning order, enhancing the amenity of the highway and its immediate surroundings or providing a service for the benefit of the public [HA80 s115B]. Again they can remove them.

¹ Twenty years use by the public under the Highways Act 1980, but may be a much shorter time under the common law. ² The definitive map and statement is the official (though not exclusive) list of public paths held by the highway authority.

(highway authority) ones. A wheelchair user desperate to use this path is a considerable asset, failing which someone with a bad hip or with an elderly relation who wants to see the countryside again before they die. Use your imagination. It sometimes works. But for a stronger case get informed by reading more of this information sheet.

An elderly lady, wheelchair bound, wanted to be able to wheel down to the local public-access horse meadow, so as to sit and admire the view, but a single stile blocked her way. It was county-owned land so they were fairly easily persuaded to agree and local users and the Countryside Management Service spent a day shoeing off the horses while they put in a kissing gate. Problem solved for that lady, and many other local people were pleased with the improved access.

Considering the need

13. Whether or not the structure concerned is lawful or unlawful, and whether or not it is in good condition, the question of what, if anything, is **needed** at that location has to be taken account of. Usually that is the need of the landholder, but occasionally a structure meets a public need.

A stile on Woodland Trust land no longer served any purpose. The local stakeholder's group for the land in question asked permission to remove it and permission was granted.

14. The decision tree at figure 1 on the inside front cover may be some help in looking at need.

15. Some cases are obvious, for example it would be rare for there to be any need for a structure

between arable fields.

16. For all normal situations where stock animals are regularly kept on one or both sides of the structure and segregation is needed, a simple self-closing two-way gate, pedestrian or bridle as appropriate, should suffice.

17. Having got some ideas about the **need** for a structure, and in many cases the **lack of need** for it, there is a step that probably should be taken, which is to think about the formal (legal) position of a structure at the location concerned.

Establishing their status

18. It is as well to try to get a feel for the formal status of apparently redundant structures; their legal status. Probably in the vast majority of cases the status will be subject to some uncertainty. But if there is shown to be a likelihood that the structure is in fact not lawful, clearly that would help in getting it removed, because the landholders can be told that they are at risk of prosecution if it is not removed or regularised, and because conditions can be applied during regularising to ensure a structure is in fact and in future the least restrictive option.

19. A summary of the legal status of structures on paths is at figure 3. It is as well to be aware of the possibilities. The majority of structures are not for certain lawful or unlawful but one can hazard a good guess, and acting

Example of use of bollards to eliminate a stile and stop dumping



Stile near road, fence broken for some time, subject to dumping as vehicles can get off the road. Dumping sometimes much worse than shown here making foot passage hazardous.



Later situation. Stile was at 'X'. Stile and fence removed, bollards put nearer to road than the fence was. Vehicles can't get fully off the road at busy corner so now don't dump here. Removing the stile improved the path and stopped costly dumping.

confidently on that, one gains that extra leverage, which is sometimes needed to overcome hesitancy in agreeing to a better structure.

20. One common situation is an old stile on an even older path, nineteenth century or earlier. If it was mostly pasture, especially in the early years, any stiles in old hedges are likely to be lawful. But if they are in hedges which were not there in the early years of the path, on the face of it they are unlawful. Similarly where there are stiles or gates in wire fences across open fields, and the fences do not appear on older maps, the presumption that they are unlawful could very well be made.

21. Gardens built across public paths often have stiles on both boundaries. One or both are likely to be unauthorised since HA80 s147 permission is most unlikely to have been given, and if given may well be null and void (See figure 3, para 2 Lawful authority given).

Dealing with lawful structures

22. The Isle of Wight has used HA80 s62. They had said:

... there is a strong demand for better bridle gates. There is on the market a two-way opening bridle gate (so that a rider only ever has to push it) which comes as a kit complete with posts and makes a very rigid structure. The gate is designed to swing shut and can be operated from horseback. Recent trials on the Island have met with universal approval from landowners and users. To install

these gates the Council can rely on the general improvement powers in Section 62 of the Highways Act which, as stated above, permits the authority to "Carry out in relation to a highway maintainable at the public expense by them, any work (including the provision of equipment) for the improvement of the highway".

It isn't clear how applicable section 62 is, but clearly here where user and landholder both like the product there are few difficulties other than who pays.

23. The photos in figure 4 give an example of another successful approach. Here it was clear that the stile wasn't really needed. We shall assume here that it was lawful, though actually that was questionable. Dumping continued until bollards were put in at a location nearer the road, effectively on the edge of the footway. At that time the stile could be removed without complaint: a solution based more on intelligent pragmatism than on legal principles.

24. Sometimes with lawful structures the landholder doesn't care whether or not a structure is there but won't do anything to remove it. The case in the box at para 13 (above) is of that type. In that case the offer by a local stakeholder to do the work was readily agreed to.

Landowners only

You can remove unnecessary structures virtually at any time without consultation. The structure is usually a restriction on the public to help you (stock control etc). The main exception would be structures put up by the local authority for public safety, such as metal hoops where a path meets a road.

Some highway authorities (eg Hertfordshire) encourage their

APPROVAL OF STRUCTURES FOR AGRICULTURE — good practice

Section 147 of the Highways Act 1980

Power to authorise erection of stiles, etc on footpath or bridleway

The act says that where the owner, lessee or occupier of agricultural land makes a submission to a competent authority, as respects a footpath or bridleway that crosses the land, that in order to ensure that the use of the land shall be efficiently carried on for agriculture (including forestry or the keeping or breeding of horses) it is expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on the path or way.... the authority to whom the submission is made may authorise the erection of the stiles, gates or other works, with the authorisation subject to such conditions as it may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public. .

It then says that where an authorisation is made, the public right of way is to be deemed to be subject to a condition that the stiles, gates or works may be erected and maintained in accordance with the authorisation so long as the conditions attached to it are complied with.

So:

- # The landholder must apply
- # The authority (normally the highway authority) must check the landholder's status as owner, lessee or occupier.
- # The authority must check that the land is in use or to be used for agriculture.
- # The authority must check that the structures are expedient to that agricultural use.
- # After that the authority may give approval, though it is not obliged to do so. And it can make approval subject to any conditions as to ongoing maintenance and also subject to any other conditions enabling the right of way to be not unduly inconvenient.

What conditions are reasonable?

Conditions help the highway authority square the permitting of structures hindering public use with their duty at all times to assert and protect the public's free use of the paths. So failure to apply conditions could be seen as a dereliction of duty. The breach of any condition makes the structure unlawful, it becomes an obstruction of the way, an offence which can be dealt with by removal, even prosecution.

Clearly the structure has to be to **some sort of standard**. Highway authorities may have their own favourite design specifications and they could well be specified, but they are unlikely to be as tightly specified and field-measurably tolerated or as embracingly specified as BS5709, the British Standard for Gaps, Gates, and Stiles. So it would usually be both simpler and more efficient simply to **make BS5709 compliance a condition**. A summary of this BS's requirements is included at the end of this information note on removing structures.

It would be reasonable to expect that in all cases the structure is conditional on the continuation of the agricultural need for a structure, and so the permission should have such a condition applied. Some have said that such a condition cannot be made, some have said that such a condition is actually already implicit in the approval process. So explicitly specifying **removal if the circumstances change** is perhaps a good middle course that puts it (very nearly) beyond doubt.

As to conditions ensuring the way is not unduly inconvenient to the public, note that it says 'the right of way' not 'the structure'. So not only such matters as maintaining the surface near the structure free of water and mud (covered by BS5709 anyway) but **compensating improvements further along the path**, say a stile to kissing gate conversion, can arguably be part of the condition so that overall the inconvenience is not undue. If the landholder argues, the authority can always simply refuse the main request. There is no appeal, landholders would have to demonstrate a very high degree of unreasonableness by the authority in a judicial review court case in order to get their way.

officers proactively to arrange for removal in these circumstances.

25. In other cases a landholder hangs on to the right and has to be offered something tangible to release it. Keeping an eye on planning applications for associated land might allow removal or replacement of the structure as a condition of consent, or more likely as a part of a legal agreement (eg s106 planning agreement).

Another approach might be taken if the structure is *unsound or impaired by neglect or use*. These are the words of a court judgment *Hereford and Worcester CC v Newman* (1975) and would allow a member of the public to use HA80 s56 to apply for an order for the structure to be restored. That doesn't directly get it removed of course, and it could make a stile that is easy to use (because it is virtually fallen down) into one much harder to use. It would help to insist it to be restored to British Standard 5709 standard (see annex 3, and para 36). But just taking the (s56) process to the highway authority application stage without going to the court stage may trigger a slow-to-move highway authority into persuading the landowner to let it be removed or to approve, say, a gate in place of a stile (probably under HA80 s147ZA see Figure 10).

26. Before moving on to unlawful structures it is worth pausing to look at the longer term, and in particular the opportunity to use the official authorisation of new structures for agricultural need and the processing of diversion orders in a way that ensures that

they will always remain the least restrictive option. That agricultural authorisation is made under HA80 s147 and some information, facts and comment on that much misunderstood law is on figure 5. Diversions may be made using highways laws or planning laws and recent legislation may make the highways law ones more common (see figure 10).

It would be well worthwhile checking that your highway authority always requires the least restrictive option to be used. They can do that most simply by requiring structures to be to BS5709. See later in this information sheet e.g. paras 37 and 44. Also check that they explicitly reserve the power to rescind the approval for **any** reason as well as ensuring that the approval lapses if the agricultural need ceases. Then in future if that structure becomes redundant, it can be removed without any difficulty. We return to these issues in para 43.

27. Some highway authorities are quite proactive in removing, and persuading to remove, redundant but lawful structures, for example between arable fields. Some are not. But in either case what is being said in this section is that for cases where the structure is actually lawful, patience and lateral thinking may be the best route to success.

Four stiles had been put up unofficially on a footpath, and cattle were using part of the path. By slightly rearranging the cattle crossing-points, all four stiles were able to be removed and replaced by just one kissing gate.

Removing and improving path paraphernalia – figure 6

Before and after



Before



After

The same entrance after removal of stile and iron fence, but leaving the tree. This was the path referred to in the ‘box’ after para 27 and the stile here was the fifth removed from that path.

Dealing with unlawful structures

28. The solution in the box on the previous page was greatly facilitated by a court summons having been taken out by the borough council (correctly but unusually) for obstruction by these stiles. It focused the farmer's mind on getting an agreement. The local user group negotiated the deal and the local authority withdrew the summons. It is surprising that this method is not used more often. Obstruction is after all a criminal offence and it could well be argued that prosecution should have gone ahead anyway.

29. The difficulty for highway authorities seems to be the interpretation of a concordat that most local authorities have accepted for enforcement of regulations. That concordat policy seems to be applied not just to enforcement of regulations (such as ploughing rules) where it belongs, but also to enforcement against criminal actions (remember that virtually any unauthorised structure is a criminal obstruction). The logic of this interpretation of the concordat is not clear at all and it short-changes the public by virtually removing that most powerful sanction: the fear of criminal conviction.

30. Highway authorities have considerable powers in another direction which they seem rarely to use, that is exercising powers that their statutory ownership of most public paths gives them. The ownership powers are in no way

diminished by the existence of similar statutory powers as HA80 s333 makes very clear. These powers are the common-law powers of an ordinary owner and would allow, for instance, the cutting of a lock on a locked gate or, of more relevance here, the removal of an unlawful structure. Indeed their common law and statutory (HA80 s130) duties would seem to require the quick action possible with this ownership power rather than the protracted procedures under the statutory powers. Normally months, but often longer (over 20 years in some paths near Watford in Hertfordshire).

31. There were two new laws added recently to HA80 that assist the removal of unlawful structures. One of these (s137ZA) increases the power of magistrates so they can not only fine for obstruction, but can order the obstruction to be removed, with stiff penalties if not. The other (s130A) gives the public the right to ask the highway authority to get the obstructions removed. The s137ZA law fills a long-standing gap in the powers of magistrates. This gap was highlighted in the Hoogstraten case where on 14th January 2000 the magistrates imposed a fine on Rarebargain Ltd. but were unable to order the obstructions to be removed. In March 2001 after the new law had come into effect, they ordered the obstructions' removal. So this law can sometimes be used to remove unlawful and unnecessary structures. You do have to show that the structure is unlawful though.

If you can't remove it, improve it - an example



An example of a stage-by-stage improvement

On the left is a stile between road verge and field. Probably legal to have a stile here as it was an old path and had been grazed for a very long time.

But it was impassable to many: high, badly designed, and in very bad condition, and it could have been required to be repaired under HA80 s146(2) or s56.

At the time the landholder was vehemently against a gate, but he recognised that something needed doing. The local path-user group wanted a kissing gate but could not insist on it. So they suggested a British Standard stile, feeling this would make a good demonstration of such a stile to help in areas where such stiles were still lawful. The user group did this work under P3, the Parish Paths Partnership scheme.

Features helping compliance with British Standard for narrow stiles:
step-ups under 300mm from ground, between steps and from step to top of cross rail. So the top-rail less than 900mm from ground.
two handposts
longer than usual steps (required by BS5709 for this type of stile)
set back four metres from a road crossing
Had there been sheep then hog-wire mesh would have been added to it or two extra rails.



The landholder blew hot and cold about a gate here but a new access officer finally got agreement, so long as it was a metal one.

So two local volunteers removed the now five or six year old stile. They used a car trolley-jack and a cross-bar to remove the deep-seated stile posts and put in a big metal kissing gate, locating it to meet the BS requirement of being four metres from the roadway, removing the latch (which would have violated the least restrictive option rule). The barbed wire near it, which may just be seen in the photo, has of course since been removed or de-barbed to meet the BS5709 standards.

Here the *least restrictive option* has been achieved and, it is believed, a HA80 s147 approval has been given with tough conditions, so if it became arable land, the gate could be removed.

32. S130A. The public right to demand removal of obstructions by using a formal notice to the highway authority, followed if necessary by seeking an order from a court (HA80 s130A) was, it seems, included in the Countryside and Rights of Way Act of 2000 to plug a gap caused by the courts' interpretation of an earlier act: HA59 s59 (now HA80 s56). That act gave the public some power to require the highway authority to deal with *out of repair* paths. The courts, as early as 1975, and despite dissention from one of the judges, decided that deliberate obstructions do not make the path *out of repair*. But the court did seem to think that structures that had *become unsound or impaired due to neglect or use* would be covered. We now have s56 for out of repair obstructions and s130A for deliberate obstructions and no clear demarcation between the two concepts. The law (HA80 s130A(4)(b)) prevents s130A being used when s56 could be used. Even where it is applicable s130A has a nasty let-out where the act says that the court must be satisfied *that the obstruction significantly interferes with the exercise of public rights of way over that way*. Some lower courts had interpreted 'significantly interferes' in its ordinary meaning, not its legal one. Thanks to OSS member Peter Kidner those lower courts have been shown to be wrong. See <http://tinyurl.com/kidnercase> Meanwhile starting one or other of these procedures could work, For use by individuals, both require a significant level of commitment.

33. It may be worthwhile in the slightly longer term enlisting local councillors' support for a more robust policy for the highway authority. See *Making it policy and law* below. In the shorter term the old standby of persuasion can often to be used.

34. Some unneeded stiles are in fairly poor condition and walkers sometimes wear some quite substantial boots. Need we say more...?

Well actually we do need to say a little more. While a little heavy footedness would very likely have no repercussions, and while taking secateurs and trimming light under or cross growth to aid passage through structures or elsewhere is nearly always acceptable, there are tight limits to what a user may do to and near structures, especially for the sort of structures we are considering in this paper. The public does not have the ownership rights that a highway authority does of the path itself. Highway authorities have considerable direct powers/duties as discussed in paragraph 30 above, as well as all their statutory ones.

35. Finishing this section with a compromise example may be apt. The middle photo at figure 7 is of a stile to BS5709, quite a rare sight. Some of the BS features are listed. Approval from the farmer came after users told him that his old structure was unlawful and he was liable to put it right and pay. The users offered to rectify it but only if it was to full BS5709 compliance (they wanted it to be

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improved and also wanted a demo BS stile). The farmer accepted the proposal. That demo only lasted a few years because a new access officer helped bring the farmer round to the idea of a kissing gate which he agreed, subject to it being the metal type and not paid for by him. It is now easy to use by almost everyone.

The use of BS5709 in replacement and modified structures.

36. Often the aim is to remove a structure altogether but, as has been indicated above, that is easier said than done and an improved structure may have to be accepted, at least in the shorter term. While many structures are wholly redundant or unlawful or both, a good number are still needed, but simply do not need to be so difficult or so unsightly or both.

37. The latest revision of BS5709, the British Standard for Gaps Gates & Stiles, was in 2006. It is called BS5709:2006 (ISBN 0 580 48107 7). It is essentially a tidy-up of the 2001 version which made fundamental changes to the original 1979 version. These changes were endorsed by the Countryside Agency (see annex 2). The National Farmers' Union and the Country Landowners' Association were involved in it, as were the Open Spaces Society and the Ramblers' Association, and others. So it has widespread support.

The standard states that where a structure is needed on a path a gate should be the first choice, a gate

the second choice and a kissing gate a third choice, all of course compliant with the standard.

It provides functional guidance for structures that would comply, giving examples, but lays down no particular construction methods or materials.

It is an ongoing standard in that compliance is dependent on the structure continuing to comply both with the physical characteristics and with the actual needs for the particular type of structure.

38. The specifications for stiles in particular only apply to existing lawful stiles and for purposes of repair or rebuild. Only quite exceptionally may new stiles ever be used.

39. The aim of the standard is to allow diversity of design so it is couched in functional terms, eg the height of steps and crossbar, the verticalness of posts, the strength of steps, the size of object that must be able to pass through a kissing gate (a cylinder on end, one metre in diameter).

To help readers, drawn examples are given. They do not have to be followed and any design complying with the rules is OK. There are several gates and kissing gates, a wide and a narrow stile, a stone stile, a horse stile (or motorcycle trap) and a dog gate. Annex 3 is a self-contained paper on BS5709, highlighting the eight cardinal rules. It is strongly recommended that these eight rules are read. And see *Making it Policy and Law* below.

40. How does this help remove or improve redundant structures?

Removing and improving path paraphernalia – figure 9

Example of a RADAR enabled kissing gate replacing a stile.



Local user group and highway authority together implemented the least restrictive option. It needed both to make it happen.

Only for the fit: the stile before.



After (viewed from opposite direction). Here the RADAR (Royal Association for Disability and Rehabilitation) lock system is being demonstrated to show how a RADAR equipped gate can be opened past the closure point to allow larger electric wheelchairs to pass.

The answer is that if BS5709 is specified in diversion orders and in (s147) permissions for structures, then ongoing compliance with the standard is automatically required. So any significant lapse, barbed wire wrapped round it or a stiff gate, would render it non standard and liable to be removed. Normally it would have to remain the least restrictive option and so if the needs change, the structure has to change too.

Heritage.

41. Throughout this information sheet the emphasis has been on need. Need to give convenient use of paths and need to give landholders reasonable stock security. But sometimes the solution would be a structure which jarred with its surroundings, possibly involving the removal of a genuinely ancient structure. In such a case one may sometimes treat the genuine historic need in the same way as the genuine needs of the landholders and go for the least restrictive option compatible with both. In the historic case that might mean leaving the structure in place and providing an unobtrusive means to bypass it. It might simply, but perhaps expensively, mean using special matching materials, perhaps a wrought-iron gate rather than galvanised or painted. The aim should be to meet the full modern accessibility specification unless there is very good reason for greater restriction.

42. While wooden can appropriately be replaced with wooden, it should not be forgotten that a truly ancient

wooden path structure is extremely rare even when made with oak. Wood (Somerset and Irish bog tracks excepted) has a very limited life in historic terms. So a knurled and rustic gate may not actually resemble an original at all. And if you go back far enough there would very likely have been crosspoles or woven hurdles. These have their uses on open-air museum sites, but very rarely elsewhere. So exceptions should be made for heritage reasons only if truly necessary.

Making it policy and law.

43. This information sheet is based on where we are now, it is aimed at helping people who are willing to get involved in removal or improvement of one or more structures. It is not primarily aimed at changing the national position. But enthusiastic individuals and groups can actually help bring about changes in both attitudes and law.

44. We currently do have a national policy of *least restrictive option*. That is government policy expressed by Natural England. But we have no overall national law to back that up. We could ask the legislators to rectify this. But it doesn't have to be national legislation, desirable though that may be; individuals can have influence at local level, and local authorities, especially highway authorities, have policies and procedures that can be improved by that influence. Figure 9 gives an example where a local user group worked with the highway authority, achieving together what

A further opportunity since 2007 – Highways Act 1980 S147ZA

Some comments on modifying and authorising structures on public paths for the benefit of members of the public with mobility problems.

The Countryside and Rights of Way Act 2000 (Section 69) is now in effect in both Wales and England.

This new law refers to powers to negotiate less restrictive path structures and the duty to consider disability when authorising structures under HA80 s147 (see figure 5 of this information sheet). It isn't entirely clear that this statutory power was needed. It was always open to a landowner to rededicate subject to a lesser restriction on the public, and to highway authorities to spend some money improving paths. And surely their statutory duty to assert and protect public rights, let alone the Disability Discrimination Acts, already required the needs of those with disability to be taken account of when authorising structures. Whether so or not we now, in both England and Wales, have some explicit powers and duties and therefore the cause of 'least restrictive option' is likely to be advanced.

Disability in this new law does not refer to registered disabled, but is interpreted more loosely, which is very welcome to those with lesser infirmities. It is open to all of us to encourage the use of this statute to reduce the restrictiveness of path structures, and to try to get it applied widely, if necessary oiling the wheels by getting external grants.

Full text here of the Welsh statutory guidance, an optional agreement form and some ancillary documents, which are a little dated:

<http://www.assemblywales.org/a483712c84e11bfbd53d07247aa61f1.pdf>

We were pleased that the Welsh found a way round what seems to have been an oversight in the statute, the fact that a structure could not be removed altogether under it. The Welsh pointed out that a Gap to British Standard 5709 may be a structure, thus allowing something very close indeed to complete removal, if all parties are willing. Defra, in its Equality Act 2010 guidance, available at <http://www.pittecroft.org.uk/structureguidance.pdf> also refers to Gaps as structures.

A copy of the (Welsh) statutory guidance is at annex 4 of this information sheet, with the rest omitted. The English guidance is very similar.

The new edition of the Blue Book (see 'Further Reading' at the end of the main text below) was published too early to cover this Welsh implementation, but it has some useful material on the Disability Discrimination Acts at 12.5.

would not have happened individually. We should all try to ensure that our own user groups and local access forums (see box),

Local Access Forum (LAF)
LAFs consist of representatives from a wide range of groups, official and voluntary. The forums were set up by statute to advise highway authorities on access matters (both to paths and to open land). The Highway Authority cannot help but be influenced, to some extent at least, by their advice. It is helpful therefore to persuade the LAF members that path structures are an important part of access. Their meetings are usually in public and the public can often speak, or at least ask questions. And individual members can be approached.

as well as local authorities, adopt the *least restrictive option* policy. It may be that they will say that is already their policy, but these authorities may still be authorising stiles or just specifying *kissing gate* without specifying details. And some user group representatives still accept stiles, even new stiles. In these cases the British Standard (BS5709) can act as a magic wand if adopted since the concept of least restrictive option is inherent. It is very simple to specify, and no one ever got sacked for specifying a British Standard.

Furthermore, as already mentioned, it is an ongoing standard, all rules applying for the life of the structure. This gives the local authority, where this BS has been specified, great power to enforce if the structure gets altered or out of repair.

45. It would seem quite simple for all highway authorities to quote BS5709 as the specification in approval forms issued to landholders (see figure 5). If they want to put the appropriate

current level of restriction, for example *self-closing gate* or *latched kissing gate* for the avoidance of arguments that would be fine. That is all the specification normally needed. If need for stockproofing ceases, the structure will no longer be to BS. So far the BS is not quoted in primary legislation but it does appear in some statutory guidance notes (see figure 10 Welsh Assembly Government guidance, which also outlines some important legislation). If we ask for the BS to be included as appropriate whenever any relevant consultation are taking place, that will clearly be useful.

46. Finally, we return to the vexed question of which of all the existing structures are currently lawful (leaving aside those explicitly authorised). It should be possible to introduce some kind of process to sort this out. This might take the form of legislation that would require authorisation for all structures except where landholders could demonstrate to some defined criteria that they were lawful. There seems to be growing support for a combined list of public roads and paths (the definitive map and the list of streets redefined and merged). It may be possible to include in that combined list those structures that act as limitations to public use.

IMPORTANT ADDENDUM TO THIS DOCUMENT

Since the bulk of this document was written there has been the publication by Defra of non-statutory guidance to local authorities on compliance with the Equality Act 2010 which superseded the two former Disability Discrimination Acts.

Defra's new guidance may be accessed here:
www.pittecroft.org.uk

Since it is a long and detailed document the Pittecroft Trust produced a note 'Understanding the Defra guidance on Public Path Structures', also on www.pittecroft.org.uk

On the same home page is a slide show Equality Act 2010 and BS 5709 published by the OSS.

All these are relevant to the present document.

Further reading

Rights of Way, A guide to law and practice, 4th edition, by John Riddall and John Trevelyan, 2007, published by the Open Spaces Society and the Ramblers' Association, obtainable from Cordee,
3a De Montfort Street
Leicester
LE1 7HD
0116 254 3579
<http://www.ramblers.co.uk/rightsofwaybook>
£29-95 + £5.50 post and packing
as at first publication.

The Open Spaces Society is grateful to Chris Beney for researching and writing this information sheet.

The Open Spaces Society is unable to accept liability for any misinterpretation of the law or any other error or omission in the advice in this paper.

Open Spaces Society
December 2014

Annexes (on pages following)

1. Grid references
2. Countryside Agency endorsement of BS5709:2001
3. Understanding BS5709
4. Welsh assembly guidance on mobility and structures.
5. Some Development Plan extracts

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GRID REFERENCES

Here are some grid references:

SN12, TL1356, TL980456, ND32754380, or even LD1367543876. You might have noticed there are always a pair of letters followed by an even number of digits. You were right to do so, there always are.

And they should generally be written without spaces.

The letters tell you to start at the bottom left (sorry south-west) corner of the 100 km square that happens to bear those letters. The first half of the numbers signifies how far the point is into that 100km square moving along to the east (eastings). The first digit gives the number of tenths of the 100km, the second one hundredths and so on. Taking TL1356 we get to the bottom corner of a map showing the 100 Km square TQ, we then move one tenth and a further three hundredths of the way across the square: one ten-kilometre distance plus three one-kilometre distances. We then turn north (northings) and go 5 lots of 10 km plus six lots of 1km (....56).

It can be helpful in remembering which comes first, eastings or northings, to think of entering a house, going along the hall/corridor and then up the stairs, so long as you follow the common human (mis)conception and think of north as ‘up’.

TL1356 describes a square on the ground with sides one kilometre square. To narrow the location to a ten-metre square, a suitable figure for defining where a structure is, you need two more pairs of digits, perhaps TL13795640. Notice how the 13 and 46 have got separated in the process, 1379 being the eastings and 5640 being the northings. The grid reference TL1379656407 would describe a one-metre square, around the accuracy of much modern mapping and a bit better than most GPS devices.

It used to be mandatory that there were no spaces in written or printed references, sometimes they are split thus: TL 1379 5640, but that is deprecated, it could easily get read as TL1379 if the 5640 slips onto another line. Always use ‘non-breaking spaces’ [CTRL+SHIFT+SPACE] on a computer if you really want to include spaces.

That would have been it until recent years. But computers and things, which are actually perfectly capable of dealing with mixed numbers and letters signifying distance, were deemed too dumb to do so and a system using all numbers was introduced, with two numbers replacing the letters and a zero point off the Scilly Isles. So TL1356 would become 513256 being some 500 km east of that zero and 200 km north of it. It is actually a rather more logical system, keeping all the eastings and northings together. Many local authorities use this notation on their computer based rights of way maps.

Of course if you have a GPS device you merely have to press the button....

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British Standard 5709:2001 Gaps, Gates, and Stiles - specification

A new Standard for Gaps, Gates and Stiles has been published by the British Standards Institute, which provides advice to landowners and managers on reducing barriers to access in the countryside.

What is the new Standard for Gates, Gaps and Stiles?

The purpose of the new British Standard 5709 for Gaps, Gates and Stiles is to help improve access to the countryside by reducing physical barriers for all path users, while taking into account the needs of landowners and land managers. It forms part of emerging best practice being developed by a range of organisations, which aims to ensure that as wide a range of people as possible are able to enjoy access to the countryside.

Who has been involved in developing it?

The Standard has been developed through a BSI (British Standards Institute) Working Group, first set up in 1996, including representatives of the British Horse Society, British Trust for Nature Conservation, Countryside Agency, Country Land and Business Association, County Surveyors Society, Fieldfare Trust, Institute of Public Rights of Way Officers, National Farmers Union, Open Spaces Society, Ramblers Association and many others. Tom Bindoff of Centrewire, a specialist gate and stile designer and supplier, was co-opted onto the group to provide technical advice and expertise.

At an early stage, research was carried out by Centrewire with members of the public at a trial site in Lewknor, Oxfordshire, to test different gap, gate and stile designs. The Countryside Agency followed this with a trial at the Royal Show (1997), where over 1500 people took part and completed survey forms. The drafts have also been

subject to public consultation and all these processes have been important in finalising the Standards.

Who are the Standards for?

The Standards are aimed at local authority staff, landowners, tenants and land managers, user groups, stile manufacturers and contractors. They will help anyone planning, specifying or approving new gaps and gates, also those buying and erecting, replacing, maintaining or inspecting gaps, gates and stiles.

What is new about the Standards?

The new Standard is a practical guide based on performance requirements rather than specific designs. It emphasises better accessibility for users, whilst enabling enclosure of farm animals, and where appropriate and lawful, excluding those not entitled to use the way - motor-bikes on footpaths for example. A range of designs may meet the Standard, but in order to assist users some examples that comply are given for gaps, gates, kissing gates, stiles, horse stiles and dog gates. This performance-driven approach enables users of the Standard to adapt the specifications to meet the needs of the site.

If at any time during the lifetime of a structure the performance requirements are no longer met, it would no longer comply with the Standard. This may make the Standard especially useful in Highways Act 1980 Section 147 approvals (local authority power to authorise erection of gates, stiles etc on footpath or bridleway).

Sometimes, there is not a need for a barrier at all. The Standards encourage the reader to think carefully about the site and possible constraints and then choose the least restrictive option to meet identified needs. Stiles are discouraged unless no other option can be chosen.

Conclusion

The Countryside and Rights of Way Act 2000 will provide a new right of access to many areas of open country and common land for the first time. It puts a duty on local authorities to produce rights of way improvement plans, which will have regard to accessibility of local rights of way to blind and partially sighted people and those with mobility problems. It requires authorities to consider those with mobility problems when authorising erection of new structures, and also enables them to make agreements to alter existing stockproof structures on footpaths and bridleways, and to

make them safer or more convenient for people with mobility problems.

The legal implications of the Disability Discrimination Act 1995 are not clear with regard to countryside access, but the Act has stimulated the debate about providing access to the countryside for disabled people. In any event land managers have to cater for a wide range of countryside users, a proportion of whom have difficulty with physical barriers.

Landowners and managers are looking for a range of advice to help them with such demands.

The Countryside Agency welcomes the publication of these Standards and encourages

local authorities and land managers to use them to achieve the overall goal of providing better access for everybody.

Understanding the British Standard for Gaps Gates and Stiles

BS5709:2006 explained

The Standard covers gaps, pedestrian gates, bridle gates, kissing gates, dog gates (dog traps or latches) horse stiles, kent carriage gaps, wide (swing leg-over) and narrow (step over) pedestrian stiles. It does not explicitly cover stiles with moving parts nor vee stiles nor ladder stiles, though these and other structures had been considered for inclusion during the writing of the standard.

These explanatory pages cover eight ‘rules’ applicable to all compliant structures. Examples are then given of a gap, a bridle/pedestrian gate, three kissing gates and two stiles. Rules specific to each structure type are shown beside them. Examples are not given of horse stiles (motorbike inhibitors), stone stiles, dog gates or the kent carriage gap. All of these are detailed in the standard itself.

The full Standard
BS5709:2006
(ISBN 0 580 48107 7)
is available from
libraries, bookshops and
BSi British Standards
389 Chiswick High Road
London W4 4AL
www.bsi-global.com

vers 3gn August 2007

Produced to assist anyone involved with gaps gates or stiles: highways officer, path order maker, land owner, contractor, gate and stile manufacturer, path user and user group.
by

The Pittecroft Trust (registered charity) and Tom Bindoff
(a PDF version of this paper, which may include later updates, is at www.pittecrofttrust.org.uk)

INTRODUCTION

BS5709, 2006 version, is performance based. The act of choosing which structure is suitable for a given situation is itself a requirement of the standard. Having made those choices the structural requirements are functional, and so long as the specified functional requirements are met then no matter what material is used in construction or what size or shape it is, the conformance with the standard will be satisfied.

History of this British Standard:

1. First published for 'stiles and gates' in 1979. This version was just for stiles and gates, and so long as the designs were met, it didn't matter if a stile or a gate was used.
2. The 2001 version was a major update. It was renamed for gaps, gates, and stiles, and the order of those words mattered. And even more significantly it was not, as the earlier version was, a bunch of fixed designs that, if erected, would comply. Instead it was a set of functional and mostly field measurable requirements, not requiring any particular design. Countryside Commission, landowners, highway officers, user groups, manufacturers, all worked together on it.
3. The 2006 version was basically a fairly minor revision of the 2001 version. Mostly clarification and small revisions following the major 2001 changes. In view of the interest in restricted byways it also now includes the kent carriage gap.

DIMENSIONS The standard is concerned only with the functionally relevant dimensions of the structures. So for example the maximum step height and the step surface area is specified but not the thickness or material.

EXPLANATION OF 'GAP' This new concept has sometimes caused difficulty and warrants explanation. A gap in BS5709 is not just a hole in the fence, but is the hole plus any structure defining it. The standard requires certain characteristics of that structure to conform to functional rules, so for example barbed wire within 1 metre of the actual gap would mean non-compliance.

Eight key rules are described on the following pages, these 'rules' are not referred to as such in the standard but are used here as a checklist of the main requirements of the standard.

Note: in rare cases it may not be practicable to keep to all of the BS5709 requirements. The Standard can still be cited but with the exception spelled out. This action is likely to be both better and simpler than not citing the BS at all and/or relying on some other local standard.

This document is aimed at enhancing understanding of the principles and salient features of the standard, for the full and authoritative details the official document, BS5709:2006 ISBN 0 580 48107 7, should be consulted.

Square brackets [] are used to refer to sections of BS5709:2006.

RULE 1: LEAST RESTRICTIVE OPTION.

Least restrictive option must be chosen. The standard's words are:

*The selection of a gap, gate or stile, which permits people to use a path crossing a field boundary such as a hedge fence or stone wall, **shall result in as little restriction as possible for potential users**, while meeting the actual agricultural needs of the landowners (principle of least restrictive option). [3.1][3.1.3]*

Notice **potential users**. On public footpaths that must mean all legitimate users including the mildly or seriously disabled, the elderly, children, mobility vehicles (pushchairs, wheelchairs) dogs. There will be some paths on which some of these users could not reasonably be expected ever to be able to travel, but they will be very few indeed. Just because other parts of the path are impassable to mobility vehicles (push chairs or wheelchairs) for example because of stiles, does not, under this standard, allow stiles or non-mobility-vehicle-passable gates to be put elsewhere on the path. To do so would be to make it harder in future to give access for all.

This is especially true of structures at the start of paths, where they leave a road. Some people with disabilities may get no further than the first field in the short term, but that is so much better than not getting anywhere at all.

The standard says that in the absence of explicitly identified counter reasons the following structures should be used in this order of preference [3.2]:

Gap, Gate, Kissing Gate, Stile.

Note the word 'explicitly'. Where a structure is being authorised under statute, for example under Highways Act 1980 sections 147 or 66 by a highway authority or their agent, it would be entirely reasonable to expect them to hold publicly available explicit reasons for not choosing a less restrictive structure.

Where something beyond a gap is needed then a two-way-opening self-closing gate is the preferred option (except adjoining roads where safety and vehicle exclusion may indicate a kissing gate).

Stiles. The Standard also says **new structures shall not be stiles unless exceptional circumstances require them** [3.1.3] [4.5.1].

RULE 2: REASONABLENESS.

Except where a gap is chosen, an **assessment of reasonableness** of putting a structure across a path must be made [3.1.2]. That assessment must include certain things being considered including whether there might be some other measure that would remove the need for any structure. An example would be where some side fencing or rerouting of cattle paths might allow elimination of the need for any cattle barriers at all on the path. As in Rule 1 it would be entirely reasonable to expect a highway authority to hold, publicly available, their assessment of reasonableness.

Square brackets [] are used to refer to sections of BS5709:2006.

RULE 3: MANOEUVRING SPACE. [4.3.e , 4.4.e, 4.5.d]

This is the space needed to be kept clear so as to allow users to get into position to open, pass through, and close a gate or to negotiate a fixed structure. This is something that is a requirement of the standard but was found difficult by the writers of that standard to specify clearly. A great deal more space is needed than is commonly assumed. One-way-opening gates need more manoeuvring space than two-way opening ones and some horses and mobility vehicles (wheel or push chairs) may need a three metre diameter space. It is desirable that those involved have some training involving actual people with wheelchairs, pushchairs or horses as appropriate. Best to get it right before installation, since just one or two potential users who are unable to manoeuvre through the structure would probably serve to prove non-compliance.

RULE 4: LOCATION OF STRUCTURES.

At vehicular roads, structures must be set back at least four metres from the (usually metalled) carriageway. Except that when on a footpath which is unlikely to be used by groups of walkers and which does not continue on the opposite side of the road, the structure need only be set back two metres from the carriageway edge [4.1.6].

RULE 5: ONGOING.

The standard requires **continuous and ongoing satisfaction.** That is even if at installation the structure is fully compliant, as soon as any of the functional requirements are no longer satisfied (for example by the placing of barbed wire on it) it is no longer compliant to the BS and must be repaired or replaced to comply [4.1.8].

RULE 6: GROUND. [4.1.5]

Ground within two metres of the structure to be free of surface water and provide a firm surface. Except immediately after rain.

RULE 7: BARBED WIRE ETC. [4.1.1]

No barbed wire, electric fence etc within one metre of the structure or the manoeuvring space.

RULE 8: PROTRUSIONS. [4.1.2 *et al*]

No protrusions likely to catch clothes or cause injury, edges radiused to 2mm or chamfered to 3mm minimum.

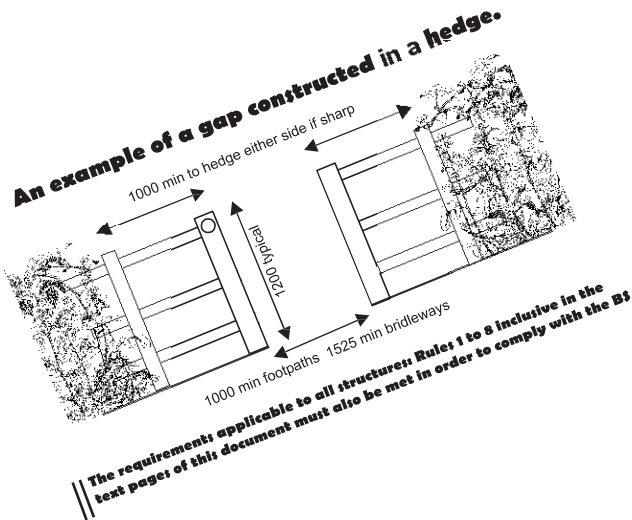
And certain other requirements about protruding direction posts [4.1.4], trapping of fingers by moving parts [4.1.3].

Examples of Gap and Gates compliant with BS5709:2006

Notes with double lines (||) are mandatory. Dimensions in millimetres.

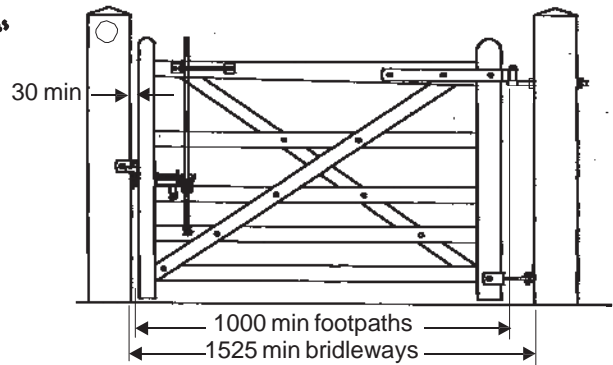
|| Dimensions marked max or min are mandatory.

These designs are examples of BS compliant structures, many different designs or constructions will also meet the BS5709's requirements.



An example of a two way bridle/pedestrian gate.

- # Latches if fitted (as here) to be visible, accessible and operable from both sides of the gate.
- # Not more than 50N (5kg on spring balance) force to fully open.
- # Gates, except off roads, if self closing must be two way.
- # For public paths a notice saying Public Footpath/Bridleway on both sides and within 2 m of the gate, is required.
- ## The requirements applicable to all structures: Rules 1 to 8 inclusive must also be met in order to comply with the BS



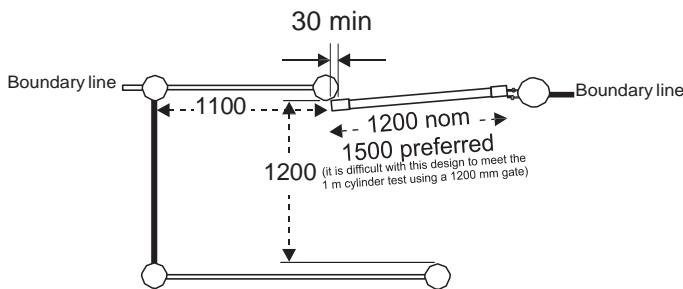
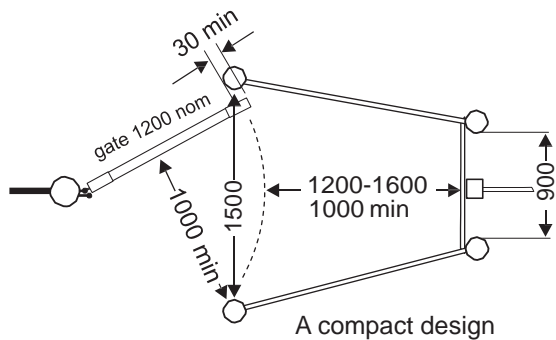
Three examples of kissing gates.

For all of these:

- # A 1 m cylinder, with axis vertical, must be able to pass through.
- # Latches, if any, must be easily accessible from either side by all users.
- # The gate must swing freely.
- # For public paths a notice 'Public Footpath' must be clearly visible to path users from both directions of approach and to be within 2 m of the structure.
- # Where the use of mobility vehicles (wheelchair or child's push-chair) is practicable at or near the structure the surface must be level or on a slope all in one plane and less than 1 in 10.

The requirements applicable to all structures: Rules 1 to 8 inclusive (in the text pages of this document) must also be met in order to comply with the BS

Height of all gates and top rails typically 1200 mm
Infill with wire mesh or other material to suit stock requirements



A design fitting neatly all on one side of a boundary

1650 mm ID typical



These designs are examples of BS compliant structures, many different designs or constructions will also meet the BS's requirements.
BS5709:2006 has structure examples similar to these as well as: horse stile (motorbike dissuader), stone stile, dog gate, Kent carriage gap.

Guidance on mobility and structures (Welsh Assembly Government)

from <http://www.assemblywales.org/a483712c84e11bfbda53d07247aa61f1.pdf>

This guidance applies only to Wales.

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 authorizing 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 authorization 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
November 2006**

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Removing and improving path paraphernalia. Annex 5.

Some development plan extracts.

“The cycle network benefits enormously from the use of the bridleway network that exists throughout the District. Wherever possible, opportunities should be taken to extend the bridleway network to link up separate systems, benefiting both the cyclists and horse riders simultaneously allowing further avoidance of on-road use. Extensions to the bridleway network would be supported by the District Council, as outlined in policy LP86 of the Local Plan.”

Suffolk Coastal DC, para 5.18.2, Jul 98

In association with other organisations, including the voluntary sector, the Council will seek to ensure that the rights of way network in the District is retained, maintained, enhanced and fully defined and publicised by the end of (state year).

Hertsmere Borough Council Policy 47

The Council will support the County Council in its aim to have all footpaths and bridleways fully signposted, recorded on the definitive map and statement, open and available for use by the public by 1999 in accordance with the Countryside Commission Target.

Supporting text: There are limited practical opportunities for provision of new bridleways in Watford but wherever possible and appropriate the Council will seek their provision.

Watford Borough Council Policy T6(c)

In association with the Watling Chase Community Forest project, the Countryside Management Service, Groundwork Hertfordshire, local user groups and land owners/managers, the Council will seek to increase opportunities to walk, cycle or ride in the countryside. In particular the Council supports the following long distance path proposals:

(i) London Outer Orbital Path (LOOP)

(iv) London Orbital Bridleway ... *[others omitted for brevity]*

Hertsmere Borough Council Policy M12, Deposit Plan Jul 98

Wherever possible footpath, cycleway and bridleway access to the countryside will be promoted. Schemes which improve and extend access into the countryside will normally be permitted.

Stevenage Borough Council Policy L21 adopted October 1994

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