

Open Report on behalf of Richard Wills - Executive Director - Communities

Report to:	Mid-Lincolnshire Local Access Forum, South Lincolnshire & Rutland Local Access Forum
Date:	24th & 25th January 2012
Subject:	Revision of Rights of Way Enforcement Policy

Summary:

A report regarding the proposed revised enforcement policy for rights of way work. and current caseloads following workforce change.

Recommendation(s):

That the report is noted and that the Forum provides comment on the proposals

1. Background

As highway authority, Lincolnshire County Council has a duty under the Highways Act 1980 to:

“Assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it”. Section 130(1) and,

“To prevent, as far as possible, the stopping up or obstruction of:

- (a) The highway for which they are the highway authority, and*
 - (b) Any highway, for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area”.*
- Section 130(3).*

In undertaking these duties the County Council must consider the affects of various pieces of legislation- see Appendix A pg 11-12.

2. Existing Policy

The existing policy was set following the Leisure & Recreation Committee Report of 10th January 1994 although this only covered ploughing and cropping offences specifically.

The basic principles in the policy are that the County Council will escalate its enforcement response dependent on the offender's past history within a five year period in the following manner:

- Warning Letter – Issued for a first issue of non-compliance in a five year period
- 14 day Formal Notice – Issued following non-compliance with a Warning Letter or for a second offence in a five year period
- 24 hr Formal Notice – Issued following non-compliance with a 14 day Notice or for a third offence in a five year period.
- Default Action – Non-compliance with a 24hr Notice would see the County Council carrying out the required works and recharging the offender. At this point consideration would also be given to prosecuting of the offender.

Other forms of offence are dealt with as per any available statutory scheme although this is not specified in the current policy.

3. Proposed Policy

Following an evaluation of the existing policy and reflecting the Enforcement Concordat formally adopted by the County Council the document at Appendix A outlines the proposed policy for dealing with all forms of rights of way enforcement.

In summary the revised scheme for ploughing and cropping offences would be as follows:

- Lincolnshire County Council will initially encourage compliance through a mixture of education and **informal** approach. This is dependent on the attitude of the offender and past history. Should this approach not ensure compliance then a **formal** written approach will be taken as follows.
- Warning Letter – Issued for a first issue of non-compliance in a five year period
- 14 day Formal Notice – Issued following non-compliance with a Warning Letter or for a second offence in a five year period
- 24 hr Formal Notice – Issued following non-compliance with a 14 day Notice or for a third offence in a five year period.
- Default Action – Non-compliance with a 24hr Notice would see the County Council carrying out the required works and recharging the offender.
- Following Default Action consideration will be given to offering the offender a Formal Caution.
- For future offences following 24hr Formal Notice consideration will be given to prosecuting the offender also taking into account any previous formal cautions.

4. Conclusion

That the revised policy provides for a more progressive and proportionate response to rights of way enforcement whilst retaining the ability to take formal enforcement up to and including prosecution of offenders

5. Consultation

a) Scrutiny Comments

b) Executive Councillor Comments

c) Local Member Comments

d) Policy Proofing Actions Required

None

6. Appendices

These are listed below and attached at the back of the report	
Appendix A	Proposed RoW Enforcement Policy

7. Background papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Lincolnshire County Council - Leisure & Recreation Committee Report - 10 th January 1994 – Public Rights of Way
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LINCOLNSHIRE COUNTY COUNCIL COMMUNITIES HIGHWAYS AND TRANSPORTATION

RIGHTS OF WAY & COUNTRYSIDE ACCESS

ENFORCEMENT POLICY

DRAFT Version 0.3

DOCUMENT HISTORY	Revision	Date
Draft Version 0.1	Initial Draft	20/5/2011
Draft Version 0.2	Revised for Core Offer amendments	13/9/2011
Draft Version 0.3	Inclusion of Equality Impact Assessment Reckoner	1/11/2011

1. Introduction

This document is designed to assist officers of the County Council in undertaking effective and efficient enforcement action against those who interfere with the public's enjoyment of the rights of way network.

By following the guidelines within this document, enforcement of the rights of way network throughout Lincolnshire will be undertaken in a consistent, fair and balanced manner across all 4 of the Highways Divisions.

NOTE: References to "landowners" within this document is held to include those currently tenanted land or any other occupier of land as applicable to the various pieces of legislation involved.

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2. Policy

As highway authority, Lincolnshire County Council has a duty under the **Highways Act 1980** to:

*“Assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it”. **Section 130(1)** and,*

“To prevent, as far as possible, the stopping up or obstruction of:

- (c) The highway for which they are the highway authority, and*
- (d) Any highway, for which they are not the highway authority, if, in their opinion, the stopping up or obstruction of that highway would be prejudicial to the interests of their area”.*

Section 130(3).

In undertaking these duties the County Council must consider the affects of various pieces of legislation. (See table of statutes – Table 1 at pg 11)

Enforcement of the rights of way network can be undertaken in a variety of different ways. Not one way will suit all occasions and it is important the County Council retains the ability to select the most appropriate method depending on the nature of the offence.

The main objectives of the enforcement policy are:

- To provide a high level of service to the public in terms of dealing with breaches of legislation to ensure that rights of way remain open and available for public usage.
- To ensure that complaints from the public about such breaches are dealt with promptly and effectively and in line with the existing prioritisation guidelines.
- To promote proactive compliance with the relevant legislation whilst retaining the ability to undertake appropriate enforcement action where necessary.

The County Council has formally adopted the Enforcement Concordat that provides an overarching policy document regarding powers of enforcement and this applies to all Council services.

Infringements on the rights of way network can be resolved by one or more of the following approaches

- **Prevention through education**

The County Council will endeavour to provide free and relevant information to landowners and their tenants through the provision of seasonally produced reminders incorporating examples of best practice, media campaigns in both the local and trade press and advice on the LCC Connects website.

- **Informal approaches to landowners and tenants**

It is recognised that offences may occur due to a lack of understanding as to the requirements of the law regarding rights of way. If a landowner or tenant is not previously known to have been an offender, officers will endeavour to make contact either in person, by telephone or by letter to discuss the most appropriate means of resolving an issue.

- **Formal Enforcement Action**

Unfortunately, despite the best efforts of officers, some landowners and tenants do not heed or respond to an informal approach.

In cases such as this the County Council will exercise its powers to undertake more formal action as laid out in the relevant legislation. (See table of statutes – Table 1 at pg 11)

Following the onset of formal action one of the following outcomes will apply

- Compliance following the service of notice
- The undertaking of the required works by the County Council, the costs of which are reclaimed from the offender (Default Action).
- A Formal Caution may be issued to the offender. If the offender does not accept the caution then the matter will be brought before the courts.
- Prosecution procedures are initiated if the offender has a history of non compliance or if the offence is serious in nature.

- **Direct Action under Common Law Powers**

On rare occasions there may be a pressing need to remove an obstruction in a very short timeframe (for example to facilitate a pre planned walk such as those undertaken during the Wolds Walking Festival). In such cases officers will instruct the contractor to remove an obstruction, if practicable, to allow the public's right of passage to be

exercised. In such instances no recharge can be made but landowners and/or occupiers must be informed of the proposed action. It is also essential that such action would be in the public's interest to undertake immediately rather than using the statutory enforcement powers.

Under no circumstances should an obstruction be removed that is in use for the control of livestock without first ensuring that the livestock is secure and will not escape following the removal of the obstruction. In such circumstances personal contact with the occupier must be made.

Prioritisation of reports from the public

The Council will investigate all reports received in respect of alleged offences regarding rights of way. A report may be made in writing (including electronically by e-mail), or verbally, both face to face and over the telephone. Anonymous reports will be investigated and dealt with on an equitable basis.

All reports about alleged offences will be treated confidentially and the anonymity of the person reporting respected as far as the law allows. However, at the appropriate stage in the process, persons reporting obstructions will be asked, to indicate whether or not they would be prepared to provide a statement and give evidence in court (should the need arise) in any subsequent proceedings.

Verbal Reports – These will be logged within the Council's Customer Relationship Management System (CRM) and passed to the relevant officer to deal with.

All written correspondence where there is a service request, and reports on obstructions would fall into this category, will also be entered into CRM and passed to the relevant officer to deal with.

Generally the Council will provide a response to the complainant based on the Prioritisation Policy adopted by the County Council's Leisure & Recreation Committee on 19th September 1994 and reinforced in the Rights of Way policy document, *Milestones 2000*. **(TO BE REVISED PENDING THE REVIEW OF THE PRIORITY POLICY)**

PATH PRIORITY	PLOUGHING & CROPPING OFFENCES	MINOR OBSTRUCTIONS	REPAIR/INSTALLATION OF ESSENTIAL BRIDGES
1	2 MONTHS	3 MONTHS	6 MONTHS
2	3 MONTHS	6 MONTHS	12 MONTHS
3	WORK SUBJECT TO THE AVAILABILITY OF RESOURCES		

This only applies where the report is considered to be standard in nature. For non-standard issues a separate letter outlining the course of action the Council intends to take, with an approximate timescale, will be issued.

Further Considerations

In undertaking investigations and enforcement action of any kind County Council officers must also bear in mind the provisions of the following legislation:

- Police and Criminal Evidence Act 1984 (PACE)
- Human Rights Act 1998 (specifically Articles 6 & 8)
- Disability Discrimination Act 1995 (DDA)

For further information on this legislation see the Officer Guidance Manual.

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3. Enforcement Procedures

Stage 1

On the receipt of a report from a member of the public or following the discovery of an offence during a proactive inspection the relevant path file should be inspected to ascertain the history of any previous incidents on that right of way.

Stage 2

If the site of the alleged offence has not been visited by an officer of the County Council then an initial visit should be undertaken to establish if an offence has been committed and to ascertain any relevant facts. In doing so it is considered prudent to take photographs and any required measurements at this time.

Comprehensive notes regarding the obstruction must be made and attached to the path file.

Stage 3

For ploughing and cropping offences, if the landowner is not known to the County Council as a previous offender, officers will take the opportunity to make an informal approach either in person, on the telephone or by way of a brief letter. In each case it is important that officers ensure that:

- The landowner is aware of the nature of the offence and accepts that an offence has been committed.
- The appropriate method of rectifying the problem is conveyed to the landowner.
- A reasonable and binding timescale is given for the landowner to act.
- That the landowner/tenant is made aware of what further action is available to the County Council should there be a continued lack of compliance.
- A brief summary of the meeting/discussion is added to the relevant path file.

Following the agreed timescale the right of way will be re-inspected and either the matter closed and noted in the path file or action is escalated to Stage 4.

For all other offences the appropriate form of correspondence and action is outlined in **Table 1** on page 11.

Stage 4

For ploughing and cropping offences, if the landowner is known to the County Council as a previous offender in the past five years or if after an informal approach, there is continued non-compliance, then the appropriate letter or formal notice will be issued in line with the following:

Highways Act 1980 – Ploughing & Cropping Offences

- Section 131A** Disturbance of the surface of headland footpaths & bridleways and any other unmade carriageways (i.e. Restricted Byways or Byways Open to All Traffic)
- Section 134** Ploughing of cross-field footpaths and bridleways without reinstatement
- Section 137A** Obstruction of any right of way by crops

1st Offence	Issue the offender with a Warning Letter for compliance within 14 days .
2nd Offence within a five year period or following non-compliance after issuing a Warning Letter	Issue the offender with a Formal Notice for compliance within 14 days .
3rd Offence within a five year period or following non-compliance after issuing a 14 day Formal Notice	Issue the offender with a Formal Notice for compliance within 24hrs and if appropriate refer the offender to the Rural Payments Agency regarding cross compliance.

Officers will also include a “**Repeat Offender**” letter to demonstrate at what point in the process and individual offence is being progressed at.

At all stages of inspection officers should make a photographic record of the condition of the right of way and make file notes on the relevant path file.

Proforma notices and letters covering enforcement work on rights of way can be found in the Officer Guidance Manual.

Stage 5

Should there still be a lack of compliance after the 24hr Formal Notice stage then in consultation with the appropriate line manager responsible for rights of way within the Highways Division and the Countryside Access Manager, consideration should be given to the following:

- **Default Action:** The pursuit of default action under schedule 12A of the Highways Act 1980 whereby the County Council will carry out the reinstatement of the right of way and recharge the offender for so doing.
- **Formal Caution:** Where the offender had shown a complete disregard for the law in either this offence or offences in previous years, consideration should be given to administering a formal caution. This is a formal record of the offence and an admission by the offender that they are guilty. If the caution is declined then the matter must be referred to the courts.
- **Prosecution:** If it is felt that the offender is persistently and blatantly disregarding the relevant legislation then consideration should be given to prosecution of that offender. Officers should use the proforma available in the Guidance Manual to assist in decision making and should it be decided that prosecution is appropriate then the matter must be referred to Legal Services Lincolnshire for further advice. Prosecution will not be a punitive response to minor breaches of legislation.

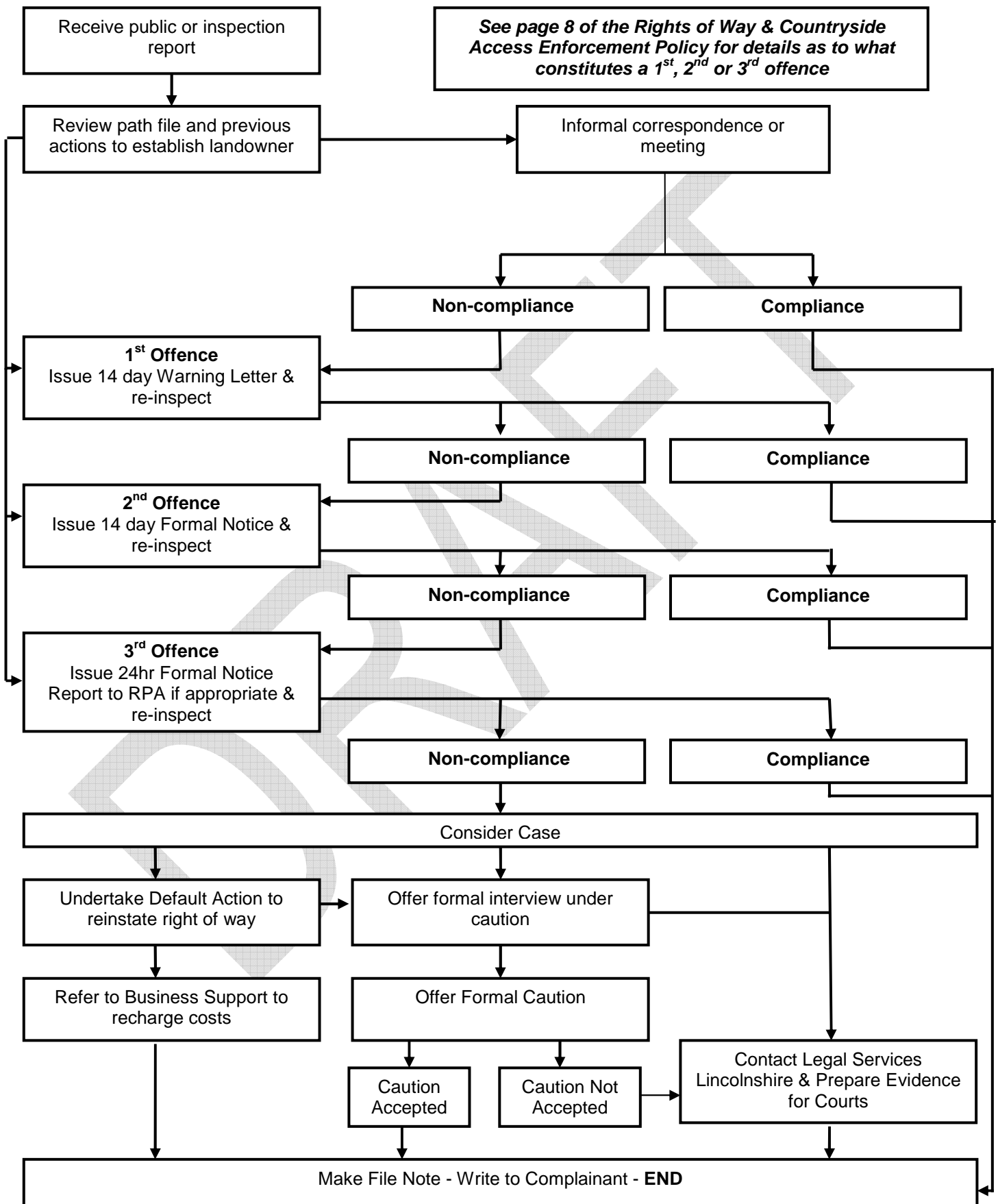
Guidance on procedures for each of these actions can be found in Parts 3-6 of the Officer Guidance Manual

Stage 6

Following the conclusion of any matter the transaction must be finally closed down and the original correspondent(s) informed of the outcome.

For prosecution cases and if not having done so already the Countryside Access Manager should be informed to assess what media and other reports should be made.

Ploughing & Cropping Enforcement Procedure Flowchart



Other Offences on Rights of Way

The following table indicates the correct form of action to taken dependent on the nature of the offence committed. Proforma notices and letters covering enforcement work on rights of way can be found in the Officer Guidance Manual.

Table 1.

Legislation	Brief Description of Offence	Appropriate Action	Intended Outcome
National Parks & Access to the Countryside Act			
Section 57	Misleading Notices	Letter then Court	Up to Level 1 fine in magistrates' court
Highways Act 1980			
Section 131	Damaging highways including ditches and excavations on restricted byways & BOATs and the removal of signposts or waymarkers	Letter then Court	Up to Level 3 fine in magistrates' court
Section 132	Unauthorised marks on highways	Letter then Court	Up to Level 3 fine in magistrates' court. Council may also remove markings at any time as well.
Section 137	Obstruction of the highway (to be used when the Council is unable to remove the obstruction itself or for an obstruction to which the provisions of Section 143 do not apply)	Letter then Court	Up to Level 3 fine in magistrates' court. The Court may also order the removal of the obstruction(s) through Section 137ZA
Section 143	Power to remove certain structures causing obstruction.	Notice	After the expiration of one calendar month the Council can remove the obstructing item(s) and recharge the cost to the person "in control" of the item(s)

Section 145	Bridlegates less than 5' in width	21 day Notice	No power to remove but magistrates' court can impose a fine of 50p per day after the expiration of the Notice.
Section 146	Gate or stile out of repair	14day Notice	Council can repair item after 14 days and recharge the cost to the offender
Section 149	Removal of things deposited on the highway causing a "nuisance"	Notice	A failure to comply allows the Council to apply for a removal and disposal order from the magistrates' court. If the "thing" is considered dangerous then the Council can remove it immediately before obtaining a disposal order
Section 154	Removal of overhanging vegetation constituting an obstruction or danger on the right of way	14 day Notice	After 21 days (period of appeal) the Council may carry out the work required and recharge the offender.
Section 161	Causing certain kinds of danger or annoyance – covers firearms near carriageways and allowing filth, dirt, lime or other offensive matter onto any highway.	Letter then Court	Up to Level 3 fine for firearms Up to level 1 fine for offensive matter, both in the magistrates' court
Section 164	Removal of barbed wire	1-6 Month Notice	A failure to comply leads to an order from the magistrates' court. A further failure allows the Council to remove the wire and recharge the costs
Wildlife & Countryside Act 1981			
Section 59	Keeping of certain bulls in fields with public access	Letter then Court	Up to Level 3 fine in magistrates' court

Screening for an Equality Impact Assessment

The legislation pertinent to Equality Impact Assessments (EIAs) requires that any policy or service that is 'relevant' undergoes an EIA.

Section 1	Yes	No
Is the policy/service covering an area that impacts on the services people (public and staff) receive or deliver?	x	
Section 2		
In each of these questions, you should think in particular of: <ul style="list-style-type: none"> • Race and ethnicity • Disability • Gender • Age • Religion and Belief • Sexual Orientation 		
	Yes	No
Would the policy/service eliminate unlawful discrimination?		x
Could the policy/service have a different impact on different groups?		x
Could the policy/service be reviewed to promote equal opportunities?		x
Could the policy/service worsen/improve community relations?		x

If any of the above in Section 2 are answered as "Yes" then an Equality Impact Assessment will be required.