

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

Report to:	South Lincolnshire and Rutland Local Access Forum
Date:	13 January 2010
Subject:	The Disability Discrimination Act 1995 and Structures (gate, gaps & stiles) on Rights of Way: DEFRA Draft Good Practice Guidance for Local Authorities

Summary:

A report providing details of the draft DEFRA guidance for local authorities on 'The Disability Discrimination Act 1995 and structures (gate, gaps and stiles) on rights of way'.

Recommendation(s):

- i) That the forum notes the contents of the report.
- ii) That the forum provides a response to DEFRA as appropriate.

1. Background

The purpose of the document is to offer good practice guidance to local authorities on the way in which disability discrimination legislation impacts on their functions in relation to gates, stiles and other such structures on public rights of way.

Government is keen to encourage more outdoor physical activity and enjoyment of the countryside, because of the health and well-being benefits that this brings. Public rights of way are the primary means by which people access the countryside. However, some people with varying degrees of mobility encounter difficulties when using some gates and stiles and this can be a significant deterrent.

If the Governments policy of encouraging access to the countryside is to be realised, removing or minimising such barriers will play a major part and the draft guidance provides information on increasing the accessibility of the countryside access network.

Deadline for comments is the end of January 2010.

2. Summary

Unlawful barriers, such as barbed wire across a path, can be tackled by authorities using the powers available to them. But dealing with barriers such as gates or stiles, which in many circumstances are lawfully erected on or across the route, requires more considered management.

A highway authority has a duty, under the Highways Act, to assert and protect the right of the public to use and enjoy a highway. The Disability Discrimination Act (DDA) adds a further dimension, by requiring (broadly) that in carrying out their functions, public authorities must make reasonable adjustments to ensure that it is not impossible or unreasonably difficult for people with disabilities to benefit from those functions as others would do, or to show that there good reasons for not doing so.

Improvements that would make it easier for people with disabilities to use rights of way would also make it easier for other users or rights of way, for example: parents with young children in buggies. But these have to be balanced against the operational needs of landowners. Authorities will need to take account of the wider context, such as the accessibility of the route as a whole and also need be aware that some rights of way are valued, by those who use them, because of their challenging nature or intrinsic character. Other local factors that may need to be taken into account, when considering potential improvements, include the historical or aesthetic character of the existing structures and landscape features. Authorities will need to take all these factors into account in deciding what structure is appropriate in each case.

There are three main reasons for the lawful existence of barriers, such as gates or stiles, on a public right of way.

- A right of way may have come into being with such structures already on it.
- An authority may make an order to create a new right of way, or divert an existing right of way, and agree to such structures in making the order.
- In the case of a footpath or bridleway, such structures may be authorised later, where there is a need to control animals for agricultural reasons.

In all three cases, there are opportunities for authorities to make improvements that benefit people with disabilities, and in doing so meet their DDA obligations. Where there are existing rights of way with existing structures, it is open to the authority to make incremental improvements in accessibility by negotiating agreements with land owners and managers.

Government considers it good practice for authorities to develop, and work to, an approved policy on structures on rights of way: this may be part of their Rights of Way Improvement Plan or part of a wider policy on the DDA. This policy should include a standard for structures, incorporating the “least restrictive access” principle.

Main Guidance Recommendations

As a matter of good practice, authorities should:

- have a published policy on how it will meet the requirements of the DDA in relation to public rights of way.
- ensure that any structures they give lawful authority to are clearly specified and documented.
- consider including in any specification, provision to remove or vary the structure when the need for it changes or ceases.
- consider displaying information on all lawful structures (including the accessibility) to enable someone with limited mobility to plan routes other than just those that are officially designated as “easy access”.

3. Consultation

Scrutiny Comments

n/a

Executive Councillor Comments

n/a

Local Member Comments

n/a

Policy Proofing Actions Required

n/a

4. Appendices

These are listed below and attached at the back of the report	
Appendix A	The Disability Discrimination Act 1995 and structures (gate, gaps & stiles) on rights of way - Draft Good practice guidance for local authorities

5. Background papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Andy Savage - Senior Countryside Access Officer, who can be contacted on 01522 782070 or andrew.savage@lincolnshire.gov.uk