

## Shropshire's Great Outdoors 2018-28

### Appendix 6- Country Parks, Heritage Sites and Public Rights of Way- Statutory Duties and Discretionary Powers

#### Statutory Responsibilities

##### Occupiers' Liability Act, 1957

The Occupier's Liability Act 1957 imposes upon the occupier a common law duty of care. Therefore, the landowner or manager of the site, as occupier must take such care to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there. This means that we have to meet a standard of care when inviting people onto our land that is acceptable to that of the "reasonable person". This is an objective standard, based on an average person. It does not require perfection, but takes into account that an average person does not foresee every risk. The average person is not assumed to be flawless, but ordinarily careful and prudent.

##### Wildlife & Countryside Act 1981

This is the principal wildlife-protection legislation in Great Britain. This legislation protects individual species and the places they use for shelter and protection through Sites of Special Scientific Interests, (SSSI's) designation. Additionally all council managed sites are included under the Act to protect all birds, their nests and eggs. The Act increases protection for SSSIs and strengthen wildlife enforcement legislation. With regard to SSSIs, it includes provisions to extend powers for Statutory Nature Conservation Organisations (SNCOs) to enter into management agreements with landowners, and it extends the range of offences and increases the penalties for breaches of legislation. In particular, it provided for a new offence of reckless disturbance.

The Council has a statutory responsibility to maintain and to continuously review and keep up to date, the Definitive Map of Public Rights of Way. The Council is required to maintain a statutory register of applications for modification orders. To make the Definitive Map and any subsequent legal orders available for public inspection.

##### Natural Environment and Rural Communities Act 2006

This places a statutory duty on all public bodies and statutory undertakers in England and Wales to have due regard to the conservation of biodiversity in all their functions. It also requires publication of a list of habitats and species of primary

#### Additional information

The standard adopted to meet our duty of care is based on RoSPA guidelines. Publically accessible sites with play areas require routine inspections.

(1) The powers conferred by this Act exercisable for the purpose of providing, or improving, opportunities for the enjoyment of the countryside by the public, owners and managers in exercising those powers in any area in the countryside shall have regard—  
(a) to the location of that area in the countryside in relation to an urban or built-up area, and  
(b) to the availability and adequacy of existing facilities for the enjoyment of the countryside by the public.  
(2) shall have power to extend, maintain and manage the country park and to do all other things appearing to them desirable for the said purpose in connection with the provision of a country park and in particular—  
(a) to lay out, plant and improve the site, and to erect buildings and carry out works, (b) to provide facilities and services for the enjoyment or convenience of the public, including meals and refreshments, parking places for vehicles, shelters and lavatory accommodation, (c) to provide facilities and services for open-air recreation.

This is the legal document which defines and underpins the public right to access to the network. The maintenance of this document ensures that access is maintained and extended. Anyone may apply to the surveying authority for a definitive map modification order to add a right of way to, or delete a right of way from, the definitive map and statement, or to upgrade or downgrade one that is already shown, on the basis that there is evidence to support the claim being made. They also have a right of appeal if applications are not determined within a specified timescale. Public Right of Way land charge searches - risk of Insurance claims if searches are incorrect. Private companies providing the information may increase risk further  
Land charge searches – provision of up to date information

Where any major work is carried out on parks and sites an environmental impact assessment (EIA) is undertaken.

importance for the conservation of each country's biodiversity (Biodiversity Action Plan Priority Habitats).  
This Act provided clarification on public vehicular rights on the ROW network and provided amendments to other legislation in respect of their creation.

**Open Space Act 1906**

[http://www.legislation.gov.uk/ukpga/1906/25/pdfs/ukpga\\_19060025\\_en.pdf](http://www.legislation.gov.uk/ukpga/1906/25/pdfs/ukpga_19060025_en.pdf)

It says:

"10. A local authority who have acquired any estate or Maintenance interest in or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest, or control was so acquired grounds by local authority.  
(a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose ; and  
(b) maintain and keep the open space or burial ground in a good and decent state, and may inclose it or keep it inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them."

Provided clarity on public vehicular rights which were often extremely contentious.

There are restrictive covenants in place on many sites that restrict actions and protect sites form development, such as:

- Charitable status
- Dedicated status
- Leases
- Deeds of Grant
- Access Rights
- Rights of commoners
- Other third party rights

**The Countryside and Rights of Way Act 2000**

The Council is required to provide a Local Access Forum to support it in delivering and developing access opportunities across Shropshire.

The Council is required to produce a Rights of Way Improvement Plan (Shropshire's Great Outdoors 2018-28), that defines future priorities for the development of the public rights of way and access in Shropshire.

**Open Access Land under the CROW Act 2000.**

<http://www.legislation.gov.uk/ukpga/2000/37/introduction>

A number of sites are registered as Open Access Land and Registered Commons. This allows public access on foot at all times. Access can be restricted for 28 days a calendar year only.

Many of the Country Parks and Sites described in this strategy have Open Access Land status. The map shown in Figure 8 also shows privately owned Open Access Land.

**Highways Act 1980**

Rights of Way are part of the Highway network and form part of the Highways Act 1980. This places specific duties on Shropshire Council as the Highway Authority to protect the Rights of Way network and powers to enable law enforcement where necessary.

**Shropshire Council responsibilities:**

- Ensuring that rights of way are free from obstruction and that they can be used by the public safely
- Clearing the surface vegetation from publicly maintainable rights of way and ensuring that the surface is in a fit condition for its intended use
- The maintenance of some, but not all, bridges
- Signposting and, where appropriate, waymarking rights of way
- Authorising gates and stiles on rights of way
- Ensuring that the definitive map is kept up to date
- Consulting as statutory consultee on all planning applications that affect a right of way

We also have the power to make diversions or extinguishments when rights of way are affected by development under the Town and Country Planning Act 1990 and for preference under the Highways Act 1980.

**Landowner and farmer responsibilities:**

The landowner must not:

- Place any object, structure, fence or anything else on the path which may cause it to be obstructed
- Plough out any headland footpath, bridleway or any restricted byway or 'byway open to all traffic'
- Allow any crossfield path to become obstructed by growing crops
- Allow any bull over ten months old to be at large in any field through which a public right of way passes, unless it's not of a recognised dairy breed and is accompanied by cows or heifers. Recognised dairy breeds are Ayrshire, British Fresian, British Holstein, Dairy Shorthorn, Guernsey, Jersey and Kerry.
- Damage, alter or interfere with the surface of any public right of way without the written permission of the highway authority (Shropshire Council).
- Allow rights of way to become obstructed by overgrowing vegetation from boundary hedges and overhanging trees

**Users rights:**

- To pass and repass along a right of way without being unduly hindered or intimidated
- To use a right of way with 'normal accompaniments' - for example a dog or pram. Note: a bicycle can't be ridden on a footpath, but may be used on a bridleway, restricted byway or byway open to all traffic

**User responsibilities:**

- To use all rights of way with respect for the owner of the land over which it passes and for other users of the network
- To use rights of way only for their designated purpose
- Not to stray from the path
- To keep any dog with you under close control when near livestock (if necessary, on a lead) and not to permit it to run over private land adjoining the right of way
- To prevent your dog from fouling a right of way so as to be a nuisance to other users and to remove any dog faeces in the appropriate manner

To comply with the Countryside Code

**Town and Country Planning Act (TCPA) 1990**

TCPA Diversion & Extinguishment orders – allows development to proceed.

These orders have a direct impact on the socio/economic environment as they enable development to take place.

**The Growth & Infrastructure Act** brought into effect in April 2013 amended the Town & Country Planning Act to allow orders to be made after planning permission has been sought but before it has been granted as it was acknowledged that the current system often resulted in development being held up due to other legal processes.

**Deregulation Act 2015**

Proposals within this Act to alter processes and procedures for Public Rights of Way.

Once fully enacted will have a significant impact on Rights of Way legal processes. Makes amendments to other legislation.

**Equality Act 2010**

In line with the provisions of the Equalities Act the Council has a responsibility to increase the

The Council is required under the Equality Act 2010 to comply with the Public Sector Equality Duty. This may be described as the duty on a public authority, when carrying out its functions, to have what is called due regard to three equality aims.

These equality aims are:

- o eliminating discrimination, harassment and victimisation;
- o advancing equality of opportunity; and
- o fostering good relations.

The legislation states that a listed authority must comply with both a general equality duty and with specific duties, as set out in the Act.

The Council is also required to show that it is working towards corporate equality objectives that will help to achieve any of the things mentioned in the general equality duty. These are set out in the Shropshire Council Equality Objectives Action Plan 2016/2020, which is published on the Council website. The Equality Objectives Action Plan 2016/2020 enables up to date positioning of the Council to assist in efforts to meet our general duty; to seek to demonstrate good practice in so doing; and to facilitate timely links with other corporate policy and strategy development, utilising the core value of Equality and Inclusion as set out in the Shropshire Council Corporate Plan 2016/2017.

This value is defined as: “Treating everyone as equal regardless of their circumstances and backgrounds, and identifying and helping people who may need support”.

Service areas are asked to use an Equality and Social Inclusion Impact Assessment (ESIIA) approach, to help to identify whether or not any new or significant planned or anticipated changes to services, including policies, procedures, functions or projects, may have an adverse impact on a particular group of people, and whether the human rights of individuals may be affected. This is so that we are thinking as carefully and completely as possible about all Shropshire groups and communities.

#### **The Conservation of Habitats and Species Regulations 2010**

These regulations implement the EU Habitats Directive in Great Britain. The Regulations provide for the designation and protection of ‘European Sites’ and the protection of ‘European Protected Species’ (EPS) **Special Areas of Conservation** (SACs). The provisions also include a statutory requirement for competent authorities to undertake an Appropriate Assessment of the potential impacts of projects likely to have a significant effect on European sites.

#### **The Health & Safety at Work Act 1974, along with The Management of Health & Safety at Work Regulations 1992** provide a framework to which all owners and

availability of routes to all users, typically removing stiles and, where possible, replacing them with more accessible gates. Easier access policy in place which targets improvements to key routes. These routes are promoted as easy access. An Equality and social inclusion impact assessment (ESIIA) has been carried out on the Shropshire’s Great Outdoors 2018-28 to ensure it complies with the Equality Act.

Under the Regulations, competent authorities have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive.

The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected.

The HSE has worked with the Play Safety Forum to produce a joint high-level statement that gives clear messages tackling these misunderstandings. HSE fully endorses the principles in this Statement.

<p>operators of play areas should work Under these Laws there is a legal responsibility placed upon the playground operator to ensure the health and safety of all visitors to the playground. Although there are no statutory requirement regarding play equipment, best practice requires that playground equipment meets British Standards BS EN 1176 BS EN 1177 Safety surfacing BS: 1447 (1988) and concrete surfacing materials BS EN 13877-1 (2004) There is no specific legal responsibility to provide inspection &amp; maintenance programmes for children’s play areas; however, the British Standards Institute, Health &amp; Safety Executive, Insurers and major Safety Organisations recommend such procedures.</p>	<p>This statement makes clear that:</p> <ul style="list-style-type: none"> <li>• Play is important for children’s well-being and development.</li> <li>• When planning and providing play opportunities, the goal is not to eliminate risk, but to weigh up the risks and benefits</li> <li>• Those providing play opportunities should focus on controlling the real risks, while securing or increasing the benefits – not on the paperwork.</li> </ul> <p>Play providers are expected to deal with risk responsibly, sensibly and proportionately.</p>
<p><b>Mines and Quarries Act, 1954</b> Under the Mines and Quarries Act, 1954, the landowners and managers have a responsibility to prevent people accidentally falling into the disused quarries.</p>	<p>Regular inspections are needed and works identified need to be addressed.</p>
<p><b>Ancient Monuments and Archaeological Areas Act 1979.</b> <a href="https://historicengland.org.uk/images-books/publications/scheduled-monuments-guide-for-owners-and-occupiers/">https://historicengland.org.uk/images-books/publications/scheduled-monuments-guide-for-owners-and-occupiers/</a> Schedule Ancient Monuments (SAM) designation makes it a criminal offence under the Act to: Destroy or damage a scheduled monument. Do any "works" which would demolish, damage, remove, repair, add or alter it (including agriculture, forestry, flooding and tipping) without previous permission from the Secretary of State or devolved equivalent, given through formal written "Scheduled Monument Consent". Remove any historic or archaeological object from the site without prior consent.</p>	<p>Landowners and managers need to ensure that consent is given from English Heritage when any work is undertaken on a SAM.</p>
<p><b>Reservoir Act 1975</b> For purposes of this Act “reservoir” means a “large raised reservoir” if it is designed to hold, or capable of holding, more than 25,000 cubic metres of water above that level. This is expected to reduce to 10,000 cubic meters of water in a new amendment through Parliament. Reservoir Act imposes duty to monitor and maintain dam walls of artificially created water bodies on sites.</p>	<p>Managing large, raised reservoirs to reduce flood risk is very important. Ultimately this responsibility for safe management remains with the reservoir owners but the Environment Agency have to enforce that responsibility.</p>
<p><b>Weeds Act 1959 / Ragwort Control Act 2003</b> The Weed Act imposes duty to control several injurious weed species throughout the UK.</p>	
<p>The designation of open spaces as <b>Queen Elizabeth II Fields</b> secures their use as public recreational spaces in perpetuity. Once dedicated they cannot be used for other purposes unless replaced with other suitable land of equal area. Landowners and managers have an obligation to ensure the dedicated sites are well maintained for public recreation.</p>	<p>Queen Elizabeth II Fields in Shropshire generally apply to urban recreation sites but there are some that fall into the scope of this strategy. These include;</p> <ul style="list-style-type: none"> <li>• Lyth Hill Country Park, Bayston Hill</li> <li>• Whitchurch Waterways Country Park, Whitchurch</li> <li>• Birchmeadow, Broseley</li> </ul>

