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The Disability Discrimination Act 1995 and structures (gate, gaps and stiles) on rights of way

Good practice guidance for local authorities

Version 1 draft 3-1

SUMMARY OF DRAFT

Purpose

The aim of the guidance (non statutory) is to assist local authorities in meeting obligations under the Disability Discrimination Act 1995 (amended 2005). The Act includes people with physical or mental impairment. Minimising barriers to access will enable more people to access the countryside.

The DDA Act makes no specific reference to public rights of way but has a broad requirement that authorities must seek to make “reasonable adjustments” to ensure people with disabilities can benefit from their functions. Promoting equality of opportunity and encouraging participation by those with disabilities is part of the Act. It is important to note that disability includes problems with manual dexterity or coordination and interpretation of the guidance would therefore cover ease of opening gates and latches and is not just about replacing stiles with gates (or gaps). Costs are, however, recognised in the Act as a factor which could justify non-compliance.

The balance

Any improvements to access which would benefit those with limited mobility and other disabilities has to be balanced against other factors which include:-

- needs of landowners, particularly in relation to stock control
- character of the route and any historical and landscape factors
- challenge of the route

Lawful structures (limitations)

Existing path furniture is in place as a result of:-

- a right of way coming into being with structures already on it
- public path orders (creations and diversions) with specified structures – legal limitations
- later authorisations, agreed with a landowner, for agricultural reasons

Improvements

These take place as a result of *negotiated agreements* with landowners and managers. For example, in Devon many stiles have been replaced with gates or kissing gates. These are not statutory improvements and rely on cooperation.

Otherwise structures in *creation orders* can be specified, hopefully aiming for the “least restrictive” options.

DEFRA RECOMMENDATIONS

1) Published Policy

Defra suggests it would be good practice for local authorities to develop an improved policy for structures on rights of way, possibly as part of the Rights of Way Improvement Plan. It is suggested that the standard for “least restrictive” access could follow either:-

- A design standard such as BS 5709 **or**
- A locally developed standard

Such a policy might include design standards, removal, repair and replacement, the approach to historic structures, dealing with diversions and agreements and structures landowners may wish to install.

The DCAF is asked to consider whether this would be an idea it would support. It is recommended that the DCAF advises Defra to retain flexibility on the approach and not be too prescriptive. A locally developed standard might work well, allowing established good practice in identifying suitable least restrictive options to be adopted more widely. The Guidance suggests that where authorities do not use BS 5709 they would need to be clear about the reasons for adopting other standards and would need to demonstrate they are compliant with the DDA.

2) Specified Structures

The development of a policy would also make it easier to specify appropriate structures in subsequent orders, ensuring greater DDA compliance.

The DCAF is asked to consider whether structures should be specified in detail in all orders.

3) Conditions

As part of any creation or diversion order, Defra suggests that authorities should consider including conditions that require “the removal or modification of a structure once the original purpose for its installation no longer applies.” (Under s147 of the 1980 Highway Act). Such a structure would then become unlawful and would be deemed an obstruction. Further applications could be made for new structures.

The DCAF is asked to consider whether such conditions or an informal approach to land managers is likely to be more successful. In terms of land management it may not always be possible to determine whether the original purpose, for example stock control, has ceased to be a reason for the structure. Many structures might also be on the boundary of agricultural holdings where land managers have different needs. Including such a condition might also increase the administrative burden on the authority.

There is already the facility under section 147ZA of the 1980 Highway Act for the authority to improve a lawful structure to permit improved access for those with mobility problems.

4) Information

Defra recommends that information on lawful structures should be publicised giving those with limited mobility the ability to plan routes.

The DCAF is advised to support this recommendation. Devon already provides information on gradients and path furniture on its website and this is

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welcomed. Authorities who do not currently provide such information should be encouraged to do so. The DCAF has previously commented on the lack of a nationally agreed system of recognised symbols for gradients/furniture and it may be appropriate to raise this again.

Other points

The document makes a statement that “if the landholder is in receipt of payment for the permitted access it is less likely that they will be excluded from the DDA provisions”. Land owners in this situation might be regarded as the “provider of a service” whereby they would come under the DDA.

The DCAF is recommended to seek clarification on this point.

Equally, the suggestion in the guidance is that public path agreements should meet the least restrictive principle. The authority may have to weigh up whether a scheme with more barriers than would comply with the DDA should be entered into.