

## Bath & North East Somerset Council

DECISION MAKER:	Cllr Charles Gerrish, Cabinet Member for Service Delivery		
DECISION DATE:	On or after 19 <sup>th</sup> March 2011	EXECUTIVE FORWARD PLAN REFERENCE:	
		E	2224
TITLE:	Amendment to Public Rights of Way Enforcement Policy		
WARD:	All		
<b>AN OPEN PUBLIC ITEM</b>			
<b>List of attachments to this report:</b>			
1. Amended Enforcement Policy			
2. Good Agricultural and Environmental Condition 8			

### 1 THE ISSUE

1.1 To consider a proposed amendment to the Public Rights of Way Enforcement Policy (“the Policy”) allowing for the referral of a breach of ‘Good Agricultural and Environmental Conditions’ (“GAEC”) to the Rural Payments Agency (“the RPA”).

### 2 RECOMMENDATION

The Cabinet member is asked to agree that:

2.1 The amended Policy appended to this report is adopted as the formal policy of Bath and North East Somerset Council.

### **3 FINANCIAL IMPLICATIONS**

3.1 There are no financial implications arising from the implementation of the Policy as recommended in this report.

3.2 It is hoped that the amended Policy will provide an effective enforcement framework for officers and minimise the chance of the Council being directed by the Magistrates Court to take action as a result of a notice to enforce duties regarding public paths.

### **4 CORPORATE PRIORITIES**

- *Addressing the causes and effects of Climate Change*
- *Improving transport and the public realm*

### **5 THE REPORT**

5.1 In order to receive Single Farm Payments from the Rural Payments Agency claimants, the majority of whom are farmers, must comply with a number of GAECs. GAEC8 relates to public rights of way and requires that claimants must not;

- i. disturb the surface of a public right of way so that it becomes inconvenient to pass over it,
- ii. wilfully obstruct the free passage along a public right of way.

GAEC8 also requires that claimants must;

- i. maintain any stile, gate or similar structure across a footpath or bridleway in a condition that makes it safe and reasonably easy to use,
- ii. make good the surface of a disturbed cross-field footpath or bridleway to not less than the minimum width within 14 days of the first disturbance if a crop is being sown, or within 24 hours in all other circumstances,
- iii. indicate the route of a reinstated cross-field footpath or bridleway to members of the public.

Failure to comply with GAEC8 may result in a reduction in the amount of payments received by a claimant.

5.2 If the Council believes that a public right of way has become obstructed in a manner contrary to one or more of the conditions details in paragraph 4.1 above, the Council can refer breach to the RPA. The RPA will then consider whether to carry out a full farm inspection and whether to reduce the amount of payments made to a claimant.

5.3 The potential consequences of a breach of GAEC8 being referenced to the RPA will act as a deterrent to some claimants who may otherwise obstruct a public right of way and may facilitate the removal of an obstruction which is already in situ.

5.4 The referral of a breach of GAEC8 to the RPA would only be done once less formal options for the resolution of the enforcement issue have been explored and exhausted; equally, the referral of a breach of GAEC8 would be done in addition

to, rather than as a replacement for, other courses of action such as the service of a notice or pursuance of a conviction. To this end, it is proposed that Course of Act 2 within the Policy is amended to include a paragraph reading;

*“A Copy of the Notice together with other supporting documentation may also be forwarded to the Rural Payments Agency (RPA) to notify them that a breach of cross-compliance GAEC8 has occurred. This may in turn lead to a whole farm inspection and, where the breach is confirmed, a financial penalty imposed.”*

## **6 RISK MANAGEMENT**

6.1 The report author and Cabinet member have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance.

## **7 EQUALITIES**

7.1 The report author and Cabinet member have fully reviewed the equalities impact assessment related to the issue and recommendations, in compliance with the Council's decision making equalities guidance.

## **8 RATIONALE**

8.1 The proposed amended Policy has been produced through a process of research, discussion and consultation. At the time of the adoption of the current Policy it was recommended that the Policy was periodically reviewed and this amendment to bring the policy up-to-date with the current legislative framework and understanding of good practice.

## **9 OTHER OPTIONS CONSIDERED**

9.1 The alternative option considered was to leave the Policy unchanged and not to refer breaches of GAEC8 to the RPA. This option would unnecessarily restrict the courses of action available to the Council's when carrying out enforcement action.

## **10 CONSULTATION**

10.1 *Parish Council; Town Council; Staff; Other B&NES Services; Service Users; Local Residents; Community Interest Groups; Stakeholders/Partners; Other Public Sector Bodies; Section 151 Officer; Monitoring Officer*

10.2 Consultation emails were sent to Parish and Town Councils, local and national user groups and landowner's organisations asking for their comments on the proposed alteration to the Policy. Additionally, an article on the proposals was featured in the Byway and Bridleway Trust's bi-monthly journal.

10.3 The only response received was an email from Charlcombe Parish Council expressing their support for the proposed amendment.

## 11 ISSUES TO CONSIDER IN REACHING THE DECISION

### 11.1 *Customer Focus; Human Rights; Other Legal Considerations*

## 12 ADVICE SOUGHT

12.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

<b>Contact person</b>	Graeme Stark, Senior Rights of Way Officer, 01225 477650
<b>Background papers</b>	Summary of consultations
<b>Please contact the report author if you need to access this report in an alternative format</b>	