

Emergency and Temporary Closures on Public Rights of Way - Standard Operating Procedure

Introduction

From time to time events occur that require a public right of way to be closed and public rights temporarily suspended. The reasons why a closure might be necessary can be varied but include such things as dangerous bridges, trees, walls or buildings, landslips, building/construction projects, utility infrastructure installations or repairs.

Where the temporary suspension of public rights is required, this is achieved by means of a Temporary Traffic Regulation Order, generally referred to as a Temporary Closure Order or an Emergency Closure Notice. Both suspend public rights, but the fundamental difference between them is a Temporary Closure Order applies to predicted events whereas an Emergency Closure Notice applies to unforeseen events.

Fortunately, only a very small percentage of the county's public rights of way network is subject to closure at any one time. For example, in 2013/14, only 75 public rights of way were closed. With around 16,000 public rights of way in the county, this represents only 0.5% of the total network (with less than a fifth of these being more heavily used paths in urban or village centre locations) and, of course, many closures were only in place for a relatively short time.

Having said this, closures can be an inconvenience to the public, especially on well used paths and the County Council seeks to minimise the disruption as will be explained below. Nevertheless, there are occasions when closures are necessary and this document explains the legislative background and the operational process.

Legislation

Temporary Closure Orders are made under the terms of the Road Traffic Regulation Act 1984. Section 14 of the Act authorises the County Council [as the highway authority] to make Orders, known as Temporary Traffic Regulation Orders, to restrict or prohibit traffic:

- a) because works are being, or will be, carried out on or near the road;
- b) because of the likelihood of danger to the public, or of serious damage to the road;

[NB: For the purposes of the Act, traffic includes public use on foot, bicycle, horseback, carriage and motor vehicle. 'road' includes footpath, bridleway, byway and restricted byway.]

Emergency Closure Notices are made under the terms Section 14 Subsection (2) of the Act which gives the highway authority the power to restrict or prohibit public use by Notice, rather than an Order, if it considers that in the interests of public safety, the prohibition or restriction should be applied immediately.

Closure Periods

An Emergency Closure Notice made for the reasons of (a) works, is limited to 5 days. An Emergency Closure Notice made for the purposes of (b) public safety is limited to 21 days. A closure originally imposed by an Emergency Closure Notice can be continued by implementation of a Temporary Closure Order, which can be publicised while the Emergency Closure Notice is in force.

Temporary Closure Orders can suspend public rights for a maximum of 6 months but should it prove necessary, orders can be extended. The County Council does not have the authority to extend an order; an extension can only be granted by the Secretary of State for the Department of Transport who has the power to extend an order for a further (unlimited) period. If the Secretary of State refuses a request to extend a Temporary Closure Order then the County Council cannot make a further Temporary Closure Order for the same route, until at least 3 months after the expiry date of the first Order.

Prior to making a Temporary Closure Order, the County Council request applicants to provide a predicted completion date for the closure so that a date by which the public might expect the route(s) to be re-opened can be included in the public notice. So although the legislation states that a Temporary Closure Order can close a route for up to six months, in practice routes may be closed for a much shorter period.

Procedure

Although some requests for a closure may originate from the County Council itself (to carry out works for which it is responsible e.g. repair to a bridge, surfacing of a path), most closures follow applications from members of the public, developers or utility companies. Applicants are normally requested to give 6 weeks' notice of a proposed temporary closure to allow time for discussion with County Council officers about the proposal, preparation of newspaper and site notices and identification of an alternative route. The County Council makes a charge for processing applications.

The regulations* require that once the County Council has resolved to make a Temporary Closure Order, a notice is, not less than seven days before the order is proposed to be made, published in a local newspaper. This notice must state the reason for, and the effect of, the closure, describe any alternative routes available, the date the order will come into force and its maximum duration. The notice must also be placed in a prominent position on, or near, each end of the route to be closed.

Within 14 days after making the Temporary Closure Order, a second notice confirming the order has been made and containing the same details about the closure as in the previous notice, is published in the same local newspaper. This notice is, as before, also placed in a prominent position at each end of the closed route and maintained (as far as is practicable) for the duration of the closure.

* Road Traffic (Temporary Restrictions) Procedure Regulations 1992 SI 1992 No 1215. These regulations have been amended by other regulations, including the following: SI 2006 No 1177, SI 2007 No 1520 (both England and Wales), SI 2004 No 3168, SI 2008 No 2512 (both England), SI 2005 No 2929 (Wales).

Due to need for urgency, the procedure governing Emergency Closure Notices is more straightforward. Like Temporary Closure Orders, a notice stating the reason for, and the effect of, the closure, a description of any alternative routes available and the duration of the closure is

placed at the ends of the closed route. However there is no requirement to publish the Emergency Closure Notice in a local newspaper.

Although there is no statutory requirement to include a plan with the closure notice, the County Council will, as a matter of course, attach a plan with the notice placed on site, highlighting the closed and alternative routes so as to assist the public in understanding the route descriptions contained in the notice.

Management of Closures

If there is an unforeseen event that occurs on or adjacent to a public right of way that poses a potential immediate danger to the public the County Council Countryside Service will investigate. If an actual or potential danger is confirmed and no immediate solution can be found the County Council will apply an Emergency Closure Notice to the route. As mentioned above, the County Council then has (depending on the terms of the Notice) up to 5 or 21 days to carry out repairs. If repairs are completed within the closure period, the Emergency Closure Notice will be removed and the route returned to public use. If the problem cannot be resolved before the closure expires, a Temporary Closure Order will be applied to the route.

A Temporary Closure Order may be applied to enable utility companies, developers or householders to carry out works on, in, or adjacent to, a public right of way where the nature of the proposed works could endanger the public using the public right of way or where maintaining public access for the duration of the works would be problematic and potentially a significant hazard to public use. (Such situations could follow on from an Emergency Closure where it was not possible to complete required works within the statutory time limits of the Emergency Closure Notice.)

Closing a public right of way, even temporarily, will cause inconvenience and so unless there are no viable options, a suitable alternative route for users will be described in the closure notice and also clearly indicated on an accompanying map, placed at each end of the closed route.

The County Council will always try to ensure the alternative route chosen will be as short and least disruptive to the public as possible. However, alternative routes may need to be longer than the route being closed. This is often because the alternative route should utilise rights of way of at least the same status as that closed; for example if the closed route is a bridleway, the alternative cannot use any footpaths, even if this would result in a shorter detour.

Although the making of closure orders is a statutory process, there is no facility for the public to object. However, the County Council recognises that path closures may be inconvenient to the public and if problems or issues are raised about a particular closure it will investigate and, if appropriate and practicable, take action to alleviate or reduce the problem. The Council seeks to limit the number of closures or minimise the impact of them in a number of ways:

- Before a Temporary Closure Order is implemented, the County Council's Countryside Service officers will have discussions with the applicant to ascertain the extent of the proposed works and the likely effect on the public rights of way network.

The County Council's advice to applicants is that if they can safely accommodate public use along with the intended works (e.g. with the use of a banksman, barriers or fencing) without having to close a route, then that would be the preferred option. However, the

applicant must be satisfied that the proposed works can be progressed without any possibility of danger to the public by carrying out their own risk assessment. If they then consider that they cannot, (e.g. extensive excavations over the entire width and length of a route) then a Temporary Closure Order will be applied. As the applicant is carrying out or managing the proposed works and is also responsible for health and safety matters on site, they are best placed to assess the potential risks to public safety - the responsibility for the risk assessment rests with the applicant, not the County Council.

- On occasions the County Council itself may be the originator of the request for a Temporary Closure Order. As with any other application, the reason for closure will be carefully scrutinised, a risk assessment carried out and other solutions considered prior to a closure being applied.
- The closest alternative route may not always be the most appropriate; on more heavily used routes the County Council's Countryside Service officers will inspect the location to seek to identify the most suitable alternative route. For example, if the closed route is surfaced with no stiles and well used by children and parents with pushchairs, an alternative route passing along a carriageway with a pavement would be indicated in preference to a nearer, but less suitable, unsurfaced path on which there are stiles or other limitations. If appropriate, extra 'advisory' notices will be placed on the affected route and/or the alternative route to give the public more information about the closure and the suggested alternative route.
- Supplementing the legal requirements for publicising closures by recording all Emergency Closure Notices and Temporary Closure Orders on its Encompass database which the public can access on-line and see which routes in the network are closed and for how long.
- Officers utilise an "alarm" facility on Encompass, to notify them of the significant stages of Emergency Closure Notices and Temporary Closure Orders to ensure that they are not overlooked, have expired or to check if the closure can be removed.
- The Parish Paths Warden (PPW), if there is one for the area, is notified. PPWs can help the County Council by 'keeping an eye' on the closures and reporting whether notices are in place, the condition of the alternative route, and whether the reason necessitating the closure has been resolved meaning that, if appropriate, a closure may be removed earlier than planned. If there is no PPW for the area, the Parish Clerk is notified.