



Legal guidance for path maintenance

A guide for path maintenance team volunteers

Introduction

This guidance has been written to give advice on the legal issues affecting volunteers doing or leading path maintenance activities. It outlines the relevant legislation and explains how it can be applied. It is designed to avoid making additional work for volunteers and in most cases acts as a gentle reminder that this legislation exists and is relevant to Ramblers volunteers.

In many instances you will already be following the guidance and so will not need to take any additional action at all.

Legislation covered

Although there is much legislation relating to highway authorities and the Ramblers in terms of undertaking work on rights of way, just three pieces of legislation are covered here:

- Criminal Justice Act 1988, section 139
- Criminal Damage Act 1971, section 1
- Health and Safety at Work Act 1974

The guidance includes a number of simple questions to help you make sure that both you and the other volunteers in the work party have an enjoyable and successful time undertaking the work.

1. Criminal Justice Act 1988

Under section 139 of the Criminal Justice Act 1988 it is an offence for any person to have with him in any place to which the public has access (thus including public rights of way and concessionary paths) any article that has a blade or is sharply pointed, except a folding pocketknife with a blade less than 3 inches, unless the person carrying the article can justify why they are carrying it. To be in violation of the Act is a criminal offence and to be charged under the Act may lead to a court appearance. **In short, you must be able to justify why you have any article with a blade or that is sharply pointed when in a public place.**

2. Criminal Damage Act 1971

The Criminal Damage Act 1971, section 1, makes it an offence to destroy or damage any property belonging to another, without lawful excuse. This applies to path maintenance teams because any work taking place off the definitive line of the right of way could be covered by this section. It is therefore essential that any work takes place on the legal line of the path, or with necessary permissions.

3. Health and Safety at Work Act 1974

Unlike the Criminal Justice Act and the Criminal Damage Act, the Health and Safety at Work Act does not have a specific section that can be applied directly to practical work. It is often the hardest to justify in a voluntary setting. This is because as responsible citizens we appreciate the need for laws to control offensive weapons and criminal damage, but it is more difficult to understand why a group of people who go out of their own accord and in their own time must follow an Act that was specifically passed to protect people at work.

The Act is not in place to create bureaucracy or stop volunteers from undertaking work, but to guide those running the session so that it is done safely and without risk to members of the group or members of the public. It is arguably the easiest of the pieces of the legislation to follow and if a working party is operating in a safe way then the chances are you are already following it.

Practical Implementation

This section of the guidance looks at how the three Acts above relate to path maintenance and how teams can ensure they do not violate them and risk repercussions. It looks at this in two ways: the first is from the perspective of an organised work party and the second from the perspective of an individual who comes across an obstruction on a public right of way.

1. Criminal Justice Act 1988, section 139 -

If you are organising a path maintenance activity you will be in a public place, regardless of whether members of the public are about. This means that you must be able to justify why you have any items with a blade over 3 inches, or that are sharply pointed. The main point is that if you have suitable tools for the footpath clearance work you are undertaking, and you transport them to and from the site in a suitable way, you will always be able to justify the reason for having them.

If you are out walking and wish to take a tool with you in case you come across an obstruction there are three things to consider. Firstly, the safest option is to ensure that the blade is less than 3 inches (7.62 cm) long – this may be a foldable penknife or pair of secateurs. Secondly, if you choose to carry something with a blade that is longer than 3 inches and/or is not a folding penknife or pair of secateurs you must feel comfortable that can justify why you have it. And finally, when not using the tool you should carry it so that it is out of view or so that it is obvious that it is not in use. Before taking action in this manner you should consider how the Criminal Damage Act 1971 applies to you and your actions.

2. Criminal Damage Act 1971, section 1 -

This is an important Act for a path maintenance team to remember as it sets out the offence of 'criminal damage'. While trespass is a civil wrong, any work that you undertake while trespassing could open you up to a charge under this Act. This means that when clearing a path you must be sure that any obstruction which you plan to remove is on the line of the right of way. For example, when removing a fence that obstructs a right of way if the posts are on either side of the right of way but the fence goes across the line of the path you can remove the fence but not the fence posts as they are on private land and not blocking the line of the path.

Secondly, you must always undertake path maintenance from the path itself unless you have permission from the landowner to move off the path and onto their land to continue the work. This permission will give you 'lawful authority' to be on private property. Responsibility for gaining this permission must be set out clearly in any partnership agreement with a highway authority. If the highway authority is responsible for gaining permission to move onto private land, you need to see a copy of the permission or written confirmation from the highway authority that such permission has been gained, before moving onto the landowner's land.

If you are out walking and come across an obstruction that blocks your path you can clear only as much of it as is necessary to progress on your way (under the common law remedy of abatement). However, you must be certain of two things before you do this. Firstly that it is a public right of way, not a permissive path and secondly that you are on the definitive line of the path. If either of these is not true you would be trespassing and, in theory, the landowner could press a criminal charge of damaging property under this Act¹ in respect of any 'work' you had undertaken. If you are certain that you are on a right of way and on the line of the path you can clear enough of the obstruction to make your way along the route. If more than this is done then you risk going beyond what the remedy of abatement permits (e.g. somebody who goes out with the express intent of clearing a particular path, equipped with a pair of garden shears or a bow saw).

There is, however, a defence in s.5 of the 1971 Act to a charge of criminal damage if the person concerned damaged the property believing that a right, such as a public right of way, was in

immediate need of protection and that the means of protection adopted were reasonable having regard to all the circumstances. This is very clearly the exception rather than the rule.

Additionally, the Criminal Law Act 1977 (s.6) makes it an offence to use or threaten violence to secure entry onto premises. This is unlikely to affect any path clearance work you carry out, but it is worth being aware of this provision.

3. Health and Safety at Work Act 1974

This Act only applies to those in an organised path maintenance activity. In the vast number of cases work parties follow the Act without even knowing it, as it outlines some common sense principles that ensure that everyone is able to volunteer in a safe and enjoyable environment.

As the path maintenance activity organiser, to ensure that volunteers are operating in a safe environment, you should make sure that the following criteria are met:

- That all the equipment is in good working order
- That any substances you use to help clear or treat the path are used with care
- Those on the clearance team have the correct training to be able to undertake the task they have been given
- That those using equipment are trained in its use and supervised correctly
- That you take enough breaks, have lunch and wear suitable clothing for the task being undertaken
- That you have a first aid kit
- That there is somebody who is responsible for the group and can take responsibility for the group and its work
- There is also a requirement to have an accident book. By recording how and why people have accidents during jobs you can identify any risks and eliminate or manage them better in future. All groups who do path maintenance work must have an accident book.

Working in partnership with highway authorities

This guidance is intended to help Ramblers volunteers work in a safe way, and in compliance with the law. In establishing and developing partnerships with highway authorities it is important that Ramblers volunteers work from a position of knowledge and confidence. However, nothing in this guidance is meant to suggest that compliance with the relevant legislation is solely the responsibility of the Ramblers. Partnership agreements between Ramblers and highway authorities should clearly state where the responsibility lies.

Case studies and best practice

Examples of path maintenance activities carried out by Ramblers teams across the country, details of insurance cover offered by the Ramblers, and advice can be found online at:

<http://www.ramblers.org.uk/volunteer-zone/support-and-development/volunteer-toolkits/volunteer-path-team-toolkit.aspx>

For more information please contact volunteersupport@ramblers.zendesk.com or call 020 7339 8500 and say your query is about path maintenance.