Guidance Notes: Highways Statutory Duties and Vested Powers

The County Council is responsible for maintaining Highways across Gloucestershire at public expense. Therefore the County Council is termed a Highway Authority. Highways England are also termed a Highway Authority and are responsible for maintaining the Major Trunk Roads across Gloucestershire. A reference to a Highway in these guidance notes includes all public rights of way that are maintainable at public expense.

The County Council are responsible for the installation, operation and maintenance of Highway drainage infrastructure, which falls within the adopted Highway curtilage in Gloucestershire (refer to Figure 1).

Figure 1 – Maintenance responsibilities for Highway and ditches/watercourse

Ditches that run alongside a Highway generally do not form part of the Highway (since they do not assist the free passage along it) and remain the responsibility of the landowner or occupier (please refer to Figure 1). Common law places a duty of the owner of land adjacent to a Highway to maintain any ditches which function as natural drainage for the land and also as part of the Highway drainage (please refer to Figure 1). However, where the ditches have been dedicated as forming part of the Highway, or where the ditch was constructed for...
the purpose of draining the Highway, then the ditch will form part of the Highway and may be
the responsibility of the Highway Authority.

Highway drains are designed to accept surface water runoff from roads and footpaths within
the Highway curtilage. The County Council have a right to drain the Highway to remove a
nuisance (i.e. water on the surface) and can connect into a nearby watercourse. In this
instance the County Council would however only be responsible for the lateral connection
into the watercourse, which would be in place to drain the Highway.

Where flooding on a Highway is caused by another person (e.g. an adjoining landowner), the
County Council can take action against the person responsible. Please refer to the
document [Waterside Living In Gloucestershire](#) for further information.
Duties and Vested Powers under the Highways Act

The following duties and vested powers, under which the authority may act, are described in reference to the Highways Act 1980 (unless described otherwise).

(The information contained below is by no means an exhaustive list of all the duties placed upon the County Council as a Highway Authority but aims to provide a high level overview of some of the key sections contained within the relevant legislation.)

Duties for Provision and Care

<table>
<thead>
<tr>
<th>Highways Act 1980</th>
<th>Section Title</th>
<th>Section Description</th>
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</table>
| Section 41        | Duty to maintain Highways maintainable at public expense. Special defence in action against a Highway authority for damages for non-repair of Highway. | This duty has been transposed into statute by virtue of Section 41 of the Highways Act 1980. The duty extends to all Highways maintainable at the public expense, with the exception of trunk roads. The Section 41 duty is not absolute. The Highways Authority must take such care in all the circumstances as is reasonably required to ensure the Highway is not dangerous for traffic. What is reasonable will depend on a number of factors, including those set out in Section 58 (defence against action for non-repair of Highway):
|                   |                                                                                | • the character of the Highway and traffic;
|                   |                                                                                | • the standard of maintenance appropriate for a Highway of that character and used by that traffic;
|                   |                                                                                | • the state of repair a reasonable person would expect to find the Highway;
|                   |                                                                                | • whether the Highway Authority knew that the condition of the Highway was likely to cause danger; and
|                   |                                                                                | • where the Highway Authority could not have reasonably have been expected to repair that part of the Highway before the incident occurred, what warning notices of its condition had been displayed. |

The section 41 duty includes a duty to provide an
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<td></td>
<td>adequate drainage system and keep the Highway free from flooding.</td>
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</table>

Section 41- The way in which the County Council manage our legal duty is via the area highways teams providing and maintaining appropriate/adequate drainage within the Highway culvertage.

Section 103 Provision of posts to indicate depth of flood water

On Highways liable to flooding to a considerable depth, the Highway Authority has a duty to provide graduated posts or stones indicating the depth of water covering the Highway where it is considered necessary or desirable.

Section 130 Protection of public rights

Section 130 imposes a general duty for the Highway Authority to assert and protect the rights of the public to use and enjoy the Highway. In order to fulfil this duty, the Highways authority has a responsibility to remove encroachments and obstructions of the Highway. Flooding is classified as an obstruction.

Section 103- At times of adverse weather the Highway Division is confronted with a demand on service for which well exceeds its capability and resources. Due to this the Highway Division prioritise their response based on risk matrix, covering things such as risk to road users and impact upon critical infrastructure.

Section 150 Duty to remove snow, soil etc. from Highway

This section imposes a duty of the Highway Authority to remove an obstruction arisen from the accumulation of snow or from the falling down of banks on the side of the Highway, or from any other cause.

Section 264 Vesting of drains etc. of certain roads

By virtue of Section 264, drains which belong to a road for which the County Council is the Highway Authority, have a vested right to use any other drains or sewers where they are and have been used for purposes connected to the drainage of the road. Note, however, that “private” drains do not lose their status by being used for also draining a Highway. Public sewers are vested in the water companies within Gloucestershire:

- Severn Trent Water: [www.stwater.co.uk](http://www.stwater.co.uk)
- Thames Water: [www.thameswater.co.uk](http://www.thameswater.co.uk)
### Section 339

**Saving for works etc. of drainage authorities etc.**

This section requires a Highway Authority to obtain the consent of the authority’s Flood Risk Management Team before any watercourse is used, interfered with, or before works are carried out on any watercourse or drainage works. The Highway Authority must obtain consent from the Environment Agency if the water body is designated as a Main River.

### Powers available as Highway Authority

If a person causes a nuisance (i.e. anything that obstructs the Highway or makes it dangerous) the Highway Authority have a permissive power to prosecute that person (causing a nuisance in the Highway is a common law offence) or take action in the civil courts for an injunction and/or damages. Generally, a prosecution for nuisance will only be considered if there is no suitable statutory provision under which to take action.

### Section 137

**Penalty for wilful obstruction**

If a person, without lawful authority or excuse, wilfully obstructs the free passage along a Highway he/she is guilty of an offence and liable to a fine.

**Section 137** - This section can relate to a third party wilfully allowing the transfer of water from their land ownership on to the public Highway, thus causing an obstruction to the free passage of the Highway. This permissive power is exercised at the direction of the Highways Division.

### Section 149

**Removal of things so deposited on Highways as to be a nuisance etc.**

If anything is so deposited on a Highway as to constitute a nuisance, the Highway Authority may by notice require the person who deposited it there to remove it forthwith and in default, the Highway Authority can remove the nuisance and recover the costs. It is possibility that flood water from third party land could be classified as a deposit and therefore a nuisance.
Section 333- Like Section 137 this permissive power can be exercised by the Highway Division to enforce upon a third party landowner that they refrain from allowing water to transfer from their land on to the public Highway.

**Specific Powers in relation to flooding and drainage**

The Highways Act 1980 gives the County Council certain powers and rights in relation to flooding and drainage. Statutory provisions under the Highway Act 1980 are described in the table below.

<table>
<thead>
<tr>
<th>Highways Act 1980</th>
<th>Section Title</th>
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<tbody>
<tr>
<td>Section 100</td>
<td>Drainage of Highways</td>
<td>Gives the Highway Authority, for the purpose of draining or preventing surface water from flowing onto the Highway the power to: construct or lay, in the Highway or land adjoining or lying near to the Highway, such as drains as they consider necessary; erect barriers, in the Highway or in land adjoining or lying near to the Highway, to divert surface water into or through any existing drain; scour, cleanse and keep open all the drains situated in the Highway or land adjoining or lying near to the Highway. N.B. &quot;Drain&quot; includes a ditch, gutter, watercourse, soak-away, bridge, culvert, tunnel and pipe.</td>
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<tr>
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<tr>
<td>Section 100</td>
<td>This power can be utilised by the Highway Division on third party land in an attempt to mitigate impact upon the public Highway. This also allows the Highway Division to lay/construct grips within the highway curtilage. Consideration however must be given to possible compensation payments if the discharge of water impacts upon private land.</td>
<td></td>
</tr>
<tr>
<td>Section 101</td>
<td>Power to fill in roadside ditches etc</td>
<td>This section gives the Highway Authority power to fill in, or place pipes in and fill in, dangerous roadside ditches, where the ditch is not required for drainage purposes and where the adjoining occupier consents.</td>
</tr>
<tr>
<td>Section 102</td>
<td>Provision of works for protecting Highways against hazards of nature</td>
<td>A Highway Authority for a Highway maintainable at the public expense has the power to provide and maintain such barriers or other works as they consider necessary for the purposes of protecting the Highway against snow, flood, landslide or other hazards of nature.</td>
</tr>
<tr>
<td>Section 102-</td>
<td>This section allows barriers to be created within the adopted Highway or land which the County Council have rights over, or has been acquired by the Highway Authority. This power is exercised at the discretion of the Highways Division.</td>
<td></td>
</tr>
<tr>
<td>Section 108</td>
<td>Power to divert navigable watercourses</td>
<td>This section authorises a Highway Authority to seek an order to divert a navigable watercourse for Highway purposes.</td>
</tr>
<tr>
<td>Section 110</td>
<td>Power to divert navigable watercourses and to carry out other works on any watercourse</td>
<td>This section gives the Highway Authority power to divert a watercourse (other than a navigable watercourse) or carry out works on any watercourse (including a navigable watercourse) for Highway purposes after consultation with every council in the area. The Highway Authority must also give notice to owners or occupiers of affected land to allow for objections and may be liable for compensation.</td>
</tr>
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<tr>
<td>Section 163</td>
<td>Prevention of water falling on or flowing on to Highway</td>
<td>A Highway Authority can require the occupier of premises adjoining a Highway to construct or erect and maintain such channels, gutters or down pipes as may be necessary to prevent water from the roof or any other part of the premises falling on persons using the Highway or prevent surface water from the premises flowing onto the footway.</td>
</tr>
<tr>
<td>Section 299</td>
<td>Right to discharge water</td>
<td>This section gives the right for surface water drains to discharge into inland or tidal waters, subject to compensation payable to owners or occupiers who suffer damage.</td>
</tr>
</tbody>
</table>
Understanding the role of Water Companies (Private Sewers)¹

Often there is confusion over the responsibilities of all parties in relation to the management of piped infrastructure within an individual’s landownership and the highway.

Your responsibility

The drainage pipes located within the boundary of your property, beneath your house, garden or driveway, belong to you and are your responsibility. They take away the waste water that flows from your property.

When these pipes reach outside the boundary of your property and connect to pipes serving another property they stop being your responsibility. This is illustrated in the diagram above.

The water company’s responsibility

The water company are responsible for the large sewers that are normally under the road or pavement. Due to a change in law, in October 2011, the sections of sewers and pipe that you share with neighbours and pipes outside your property boundary, which connect to our existing network, are now the water company’s responsibility. If you think one of the water company’s sewers is blocked, you should call their emergency number. They’ll arrange for sewer technicians to check it out.

¹ Adapted from “Responsibility for sewer pipes” on www.stwater.co.uk
- If a public sewer is blocked— that’s one owned by the water company - they’ll clear the pipe
- If the problem is in a private drain or private sewer, you’ll need to pay for an independent drain clearing company to carry out any clearance work

**What belongs to the council**

The highways authority, usually the county council, deals with blocked highway drains and road gullies that are causing surface water flooding.

Please visit [Water UK’s website](https://www.water.org.uk) for further guidance on a range of scenarios.

For further clarification on drainage asset ownership the relevant water company should be contacted directly.

- Severn Trent Water: [www.stwater.co.uk](http://www.stwater.co.uk)
- Thames Water: [www.thameswater.co.uk](http://www.thameswater.co.uk)
- Wessex Water: [www.wessexwater.co.uk](http://www.wessexwater.co.uk)
- Welsh Water: [www.dwrCymru.com](http://www.dwrCymru.com)