Advice on

Electric fencing and equestrian access

The British Horse Society

The law and management of public access rights vary widely between the four countries of the United Kingdom. Practical elements of the following advice apply in all of them but the legal requirements in Scotland and Northern Ireland may differ from those in England and Wales.

This advice note relates to electric fencing near public bridleways, byways and other highways or land with public access on horseback (some commons). For grazing of horses using electric fencing, see www.bhs.org.uk under Welfare.

More advice is available on www.bhs.org.uk/accessadvice.

IMPORTANT This guidance is general and does not aim to cover every variation in circumstances. Where it is being relied upon, The Society strongly recommends seeking its advice specific to the site.

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Contact with electric fencing can cause serious injury with potentially fatal results for any person driving or riding a horse, partly because many horses are wearing metal shoes, and because their natural reaction to a shock of any magnitude could be fast and forceful. When a horse receives a severe shock, directly or through the rider or handler, a rider may be thrown and the horse may bolt out of control. A loose horse may have consequences for others as well as for its rider or driver.

It is the landholder's responsibility to ensure that the public is not put at risk by electric fencing.

Before installing any electric fencing near a route open to the public with horses, the landholder should carry out a risk assessment, mindful of risk and consequences of a horse or handler receiving a shock, and ensure that fencing is well away from the area used by the public. Gates on horse routes are where the space needed to manoeuvre is usually badly under-estimated and it is particularly important that electric fencing leading up to a gate is at least 2m away from both latch and hinge end of the gate on both sides. Alternatives to the use of electric fencing should be carefully considered.

Legislation has not caught up with the widespread use of electrified fencing in agriculture, the keeping of horses or even pets, although the need to consider it similarly to barbed wire has been acknowledged since at least the 1940s. The Barbed Wire Act 1893 prevents the use of barbed wire in roads, streets, lanes and other thoroughfares, which can be taken to include public rights of way. Under this Act, the case of *Stewart v Wright* (1893)[1] ruled that recompense was due from the landholder for damage to a coat blown onto and torn by barbed wire adjacent to a path. While there is no equivalent law for electrified fencing, the principle is clearly transferable and is the basis on which this advice note has been produced. It is possible for a Public Space Protection Order (made by the council) to provide a mechanism for enforcement in an area where electric fencing is a problem.

Electric fencing should not be used on registered commons or public open spaces which have rights of access on horseback other than in exceptional and very temporary circumstances. Fencing will need authorisation if it is across a public right of way or limiting open access. Some commons have an open right of access on horseback so any provision for the public must include safe facilities for horses. Fencing across popular routes on access land should be avoided.

Principles for electric fencing near equestrian routes

1. Electrified fencing across an equestrian route at a gate should be:
    - Insulated or shielded for at least 2m each side of a gateway
    - Unable to contact a gate at any point in its swing
    - Insulated and buried across the gateway, leaving a firm level surface

Where it is decided to take a wire above a gate, it should be carried at least 3.4m above the gateway from 2m beyond the gate posts on robust poles or posts which hold the wire taut at that height, so there is no risk of the wire sagging.

2. Electrified fencing should be avoided alongside equestrian routes. Where it cannot be avoided, a wire along one side of a way should:
    - Be shielded from users of the way by a wood or plastic rail, and
    - Be at least 0.5m outside the edge of the right of way, with the way having a useable width of no less than 3m, and
    - Remain taut between secure upright posts even when windy

3. Where electrified wire along one side of a route cannot be shielded, it should:
    - Be at least 1m outside the edge of the right of way, with the way having a useable width of no less than 3m, and

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- Remain taut between secure upright posts even when windy

4. Electric fencing on both sides of a route to form a corridor should be avoided. If there is no safer alternative:
    - Each wire must be taut between secure upright posts and shielded from users by a plain rail at least 0.5m outside the edge of a useable width of no less than 3m (4m total between fences).
    - If it is not possible to shield the wires, each wire must be taut between secure upright posts at least 1m outside the edge of a useable width of no less than 3m (5m total between fences)

A useable width is one without trip hazards, ruts or uneven ground; free from surface vegetation more than 150mm high and clear of overhanging vegetation to a height of at least 3.4m.

Part of the width requirement is to provide safe passing for all users without any party having to go close to an electrified wire. For horses, 'too close' is further away from the wire than for a human, particularly if it is a high voltage mains electric fence as horses are aware of the current and may refuse to approach or become harder to control. The requirement is therefore relative to the site, and the length and voltage of electrified fence. Occasionally, depending on other factors at the site, it may be safe to reduce the width slightly; occasionally it may be necessary to increase it (see Mitigation). The width also takes account of the fact that the electrified fence is there to contain livestock, and the presence of livestock increases the risk to horses on the way, therefore the additional width keeps livestock further away to decrease risk.

Where an electrified fence is at an angle to a gate, it must be at least 3m away from the gateway and should be insulated or protected from contact for 3m from the gate to ensure a horse or rider is not near the fence during manoeuvring to open the gate.

An electric fence across a right of way is an obstruction which is a criminal offence even if it is temporary. An insulated spring handle to open a gap in an electrified wire across a way is unacceptable because it cannot be negotiated safely without dismounting and because a horse may refuse to approach it or may touch the wire while the rider is opening it. The highway authority may be able to authorise a temporary wooden gate to provide for a new fence line with the condition that the gate must be removed when the fence is not in place.

Surface vegetation within an area fenced by electrified wire must be cut to ensure that conditions underfoot are safe and that the electric fence is not obscured by vegetation.

Electric fencing should carry warning signs where it starts and ends near a route used with horses and at suitable intervals along its length no less than 50m apart when alongside the way.

Whether to take a wire underground or overhead at a gateway has some merit either way. Taking the wire underground is vulnerable to underground leakage of electricity which is unknown to humans but horses are particularly sensitive if they have metal shoes and may refuse to approach or become difficult to control without the rider or driver being aware of the fence. Taking overhead would remove this risk but it must be maintained taut at least 3.7m above the ground, with no sag or movement in any weather conditions. That is difficult so the recommendation is for fencing wire to be threaded through a rubber pipe and buried well below ground so as not to be brought to the surface or become a trip hazard in any conditions. The rubber pipe should extend above ground by 300mm where it comes out of the ground to avoid shorting.

An energiser which clicks should be placed where it is less likely to be heard from a route used with horses.

Explanation

Electric fencing is often used in fields where horses are kept, so some horses will recognise it. This will discourage the horse from touching the fence, often to the extent that it may be difficult for the rider or driver to control if space is too tight or there are other factors such as livestock either side of the fence.

A horse is particularly sensitive to electric shocks if it has metal shoes, which is a high proportion of those taken along rights of way. The effect is magnified when the horse is wet with rain or sweat, and it is normal for a horse to sweat during activity. A horse can receive a shock if its tail touches the fence, which may happen when the horse flicks its tail against flies or in windy conditions.

Although contact with an electric fence can be unpleasant for a person on foot, for any person driving or riding a horse, a severe shock may cause serious injury because the horse is likely to react violently, the rider or driver may be thrown or the horse may bolt. The horse is a prey animal and the electric shock will register as an invisible predator, therefore its impulse is to leap or kick against the attacker and run, any of which sudden movements may unseat the rider or driver.

A horse in harness is at additional risk from potentially kicking out and hitting the vehicle or being caught on harness or shafts. There have been rider deaths following ridden horses in contact with an electric fence and there have been severe injuries and death to horses from becoming entangled in electric fencing. The latter is particularly likely where there is more than one fence in close proximity and a horse touches another in leaping away from a shock from the first. There have also been life-changing injuries from electric fencing crossing a route at height and invisible to a rider, who was caught by the neck while passing along the bridleway.

Mitigation

There is a big difference between mains and battery unit electrification of fences. The hazard posed by mains power is far higher because of the voltage. It is very important that voltage is checked and limited to reduce the severity of any contact.

The hazard posed by electric fencing increases:

- The closer a horse needs to pass it
- The more electric fencing there is in the vicinity i.e. to all sides is much worse than to one
- The more limited the space because close spaces are naturally seen as traps by a horse, and the presence of electric current exacerbates that response
- The presence and excitability of livestock or loose horses on either side of the fence
- The presence of livestock or loose horses on both sides of the fence
- The need to negotiate a gate with electric fence adjacent
- Stock or loose horses on either side of a gate with electric fence nearby
- Uneven or boggy ground, overhanging branches or high surface vegetation

These exacerbating factors should either be reduced or the separation distance from or shielding of electric fencing increased.

Boisterous stock or loose horses often pose a greater hazard than in-milk dairy cows or other stock less likely to be excited by visitors. However, all animals are unpredictable and level of response cannot be guaranteed. Risk assessments for loose animals in conjunction with electrified fencing and public access with horses should be carefully undertaken.

Electric fencing should never be used where there is a cattle grid on the natural escape route as a bolting horse would be likely to run into the grid with high risk of a fatal result for horse and possibly the rider.

National Farmers' Union guidance

In July 2000, (still current advice) the National Farmers' Union issued guidance to its members, saying that:

> the safest course would be to avoid placing electric fences along public rights of way altogether. If electrified wire has to be used, (and bear in mind the Health and Safety risk assessment protocols demand that alternatives to any potentially dangerous practice be seriously considered), it should be placed so that under normal

> circumstances no one using the right of way is likely to come into contact with it. There should also be ample warning signs.

The Society agrees with this guidance.

The Law

Electric fencing across a public right of way is an obstruction.[2] The highway authority has a duty to prevent and remove obstructions. For further advice on obstructions see BHS Advice on Blocked and difficult to use bridleways.

Section 161 of the Highways Act 1980 provides that if a person without lawful authority or excuse deposits anything whatsoever on a highway in consequence of which a user of the highway is injured, that person is guilty of an offence and liable to a fine.

Section 165 provides that if, in or on any land adjoining a street (which in this context includes any road or public right of way), there is an unfenced or inadequately fenced source of danger to persons using the street, the local authority may require such works as will obviate the danger to be undertaken.

Section 178 provides that: "No person shall fix or place any overhead wire over, along or across a highway without the consent of the highway authority…"

Section 3 of the Health and Safety at Work Act 1974 imposes a duty on every employer and self-employed person "to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety." and inspectors have powers to issue improvement or prohibition notices under Sections 21 and 22. The Health and Safety Executive document OM 2003/110 covers requirements concerning electric security fencing.

Electric fencing used for containing horses or other animals which are not kept for business will not fall under the Health and Safety at Work Act but the owner of the fence still has an obligation under Occupiers' Liability Act 1957 for the safety of any lawful visitor on the land (which includes users of a right of way).

Any new fencing, including temporary electric fencing, on registered common land requires the permission of the Secretary of State, except temporary fencing in a limited number of specified circumstances. Where an application is made to the Secretary of State for consent to a fencing scheme, the scheme should make proper provision to preserve existing rights of access to the land, and if it does not, representations may be

[2] *Kent County Council v Neeson* (QBD) (1996) unreported

made on the application to the Secretary of State. For further information please contact the Society.

The Health and Safety Executive has guidance for Cattle and public access in England & Wales.

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