

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT
1949

Survey of Rights of Way

Memorandum prepared by the Commons,
Open Spaces and Footpaths Preservation
Society in collaboration with the
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SURVEYS AND MAPS OF PUBLIC RIGHTS OF WAY

1. INTRODUCTION

Ever since the coming into force of the Rights of Way Act, 1932, the Society has been impressing upon local authorities in general, and Parish Councils in particular, the importance of making surveys and records of public rights of way. Such surveys were valuable because they removed uncertainties, lessened the risk of disputes as to whether particular paths were public or not, enabled any obstructions of, or interference with, public rights of way to be dealt with promptly, and were helpful to law-abiding members of the public who were anxious to use fieldpaths but did not want to trespass.

A considerable number of local authorities, from County Councils downwards, either on their own initiative or at the Society's suggestion, made surveys, but these have covered only a small fraction of England and Wales.

The need for a national survey has been constantly emphasised by the Society and its associates, and has become urgent, partly because of the many interferences with, and temporary loss of, public rights of way during and since the war (of which the ploughing up of footpaths is a conspicuous example), and partly because of the increasing number of townsfolk who come out into the country for recreation.

This need has now been recognised by the Government whose National Parks and Access to the Countryside Act (which was introduced in March and received the Royal Assent on December 16th, 1949) contains a section (Part IV) dealing with this very subject.

The Act defines the Rights of Way which are covered by the Survey as follows:

"Footpath" means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road.

"Bridleway" means a highway over which the public have the following but no other rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse with or without a right to drive animals of any description along the highway.

Footpaths and bridleways are also combined in the Act in the expression "public paths."

"Road used as a public path" means a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used.

Under the Act, it is the duty of every County Council in England and Wales to carry out a Survey of the rights of way as defined above and to compile a map showing them. The maps will be prepared in three stages and will be called "draft," "provisional," and "definitive" and the last of these will be conclusive proof that every way marked on it is either a "Footpath," "Bridleway" or "Road used as a public path" as defined above. If a Bridleway is also a Driftway, i.e., a highway on which the public have a right to drive animals, this should be mentioned in the schedule (see Section 5 below), for the information of the Surveying Authority.

The fact that a way is marked on the map as a Bridleway or as a Road mainly used as a public path, does not prejudice any other right of way which the public may have over it.

Provision is made for corrections in the draft and provisional maps, so as to ensure that the definitive map contains no mistakes, and the last will be kept up to date by revision at intervals of not more than five years, so that it will always be an authentic record of the public rights.

While it is the duty of the County Council as "Surveying Authority" to compile the record, it is quite impossible for them to do this unaided, and the Act therefore provides that before carrying out the survey the County Council shall consult with the councils of county districts and parishes, as to the arrangements to be made for the provision by such councils of information for the purposes of the survey. It also provides that in parishes where there is a Parish Council, that council must cause a Parish Meeting to be held to consider the information which it is proposed should be submitted to the Surveying Authority, and that where there is no Parish Council, the District Council must require "the representative body of the Parish or a member of that body" to cause a Parish Meeting to be held for the same purpose. District and Parish Councils must furnish the information as required by the County Council and can be compelled by legal proceedings to do so.

What this amounts to, in plain language, is that every County Council requires to be informed, by all District and Parish Councils in the county, what public footpaths, bridleways and roads mainly used by pedestrians and horse riders, there are in the parish.

Many points of procedure will arise in the preparation of the three successive maps by the County Council, including deposit of the map (or the appropriate section of it) in each parish,

advertisement, opportunity for criticism by owners and the public, and so on. Pamphlets will shortly be issued by the Society, explaining the Act fully; but all District and Parish Councils ought to embark without delay upon the task of collecting the information that will be required about the public rights of way in the parishes; and the following notes are intended as a practical guide for this purpose.

2. HOW to PREPARE for a RIGHTS OF WAY MAP

- (i) The first step is to give an existing committee the function of dealing with, or to appoint a committee to deal with, the matter. It is permissible to add to such a committee persons who are not members of the Parish Council. (Local Government Act 1933, Section 85 (1) and (3)).
- (ii) The Committee should obtain a set of the six inch Ordnance quarter-sheets covering the parish. Unless officially supplied free, these maps will cost 2/- each, and can be obtained from a local bookseller or from Messrs. Edward Stanford Ltd., 12/14 Long Acre, London, W.C.2, authorised London Agents for the sale of Ordnance Survey Maps.

These six inch sheets will be the maps which, when completed, will be submitted to the Surveying Authority.

- (iii) The Committee should then consult any other maps and records which may help. These include Inclosure Award maps, Tithe maps, Parish maps, maps of admitted public rights of way deposited by owners under Section 1 (4) of the Rights of Way Act, 1932, statements in writing by owners expressly dedicating paths, old Ordnance Surveys, maps in local guide books and histories, footpath rambling guides and old minutes of the Parish and District Councils.

Inclosure Awards were made when common lands were enclosed. A copy of the Award was deposited in the Parish Chest, and should now be under the care of the Parish Council. Another copy was usually lodged with the Clerk of the Peace for the County, in which case it should be available for inspection in the County Archives. These Awards show whether any paths or other ways were set out or awarded as public, or stopped up, over the common lands ordered to be enclosed. There were some 4,700 Inclosure Awards, which dealt with over 5,000,000 acres of common land, so that it is always useful to enquire if an Award affects any parish, and the Commons, Open

Spaces and Footpaths Preservation Society will be able to say from its records if an Award was made.

Many of these Inclosure Awards, however, are nearly 200 years old, so that even if they did not set out public paths over the Commons enclosed, it is probable that paths freely used as public throughout living memory are public now, although they may not have been awarded.

Tithe maps frequently show paths, and if they do so they are valuable evidence. The Tithe maps and Awards are public documents which should in most cases be in the care of the Parish Council or of the Incumbent.

Some parishes possess Parish maps, which were generally made about 100 years ago. Where they exist they should be consulted.

Maps deposited by owners under Section 1 (4) of the Rights of Way Act, 1932 are in the custody of the District and County Councils.

If any of the earlier Ordnance maps are available they should be examined and compared with the latest edition. It will often be found that tracks which used to exist and are described by old witnesses as public are no longer in use and are not shown on the later editions, but if a path has once become public, mere disuse does not extinguish the public right. Ordnance maps do not distinguish between public and private paths, but mark all visible tracks. Where they describe a path as "B.R." the surveyors found a path apparently used as a bridleway; or if "F.P." as a footpath; but the use of such letters does not necessarily mean that such paths are public, nor does the omission of the letters signify that they are not public.

By consulting the maps referred to, much information will be gained as to the location and antiquity of many tracks.

- (iv) Having examined all the documentary evidence, the next step will be to consider what footpaths and bridleways must be presumed to have been "dedicated" as public rights of way because they have been used by the public as of right and without interference for not less than 20 years, without any indication by the owners (for example, by the display of "Private" or similar notices referring to the path) that they did not intend to "dedicate." In this connection it must not be forgotten that, if public use for the necessary period can be proved, the fact that the path may have gone out of use recently, or that the owner may have put up such a notice recently, makes no difference to its public status.

- (v) Other pamphlets issued by the Society describe public paths and how they arise.* It may be helpful to indicate here how most public paths can be recognised.

Paths are likely to be public:

- (1) Where they have been signposted by the County, District, or Parish Council.
- (2) Where they are, or have been, provided with stiles, wicket gates, footbridges, stepping stones, or other means of passage.
- (3) Where they, or any of the means of passage along their route, have been repaired at the public expense.
- (4) Where they are useful to the general public and not only to the tenants or employees on the estate, and have long been used by the public as rights of way.
- (5) Where they lead to wells, view-points, the sea, rivers, etc., which are much visited by the public.
- (6) Where no objection to public passage has ever been raised.

Paths are not likely to be public:

- (1) If they are devious tracks of no obvious use to the public as thoroughfares or to give access to view-points, etc.
- (2) If they are of use only to persons living or working on the estate through which they pass.
- (3) If they have only recently come into existence (unless statutorily created or expressly dedicated in writing).
- (4) If steps have been taken to close them occasionally.
- (5) If pedestrians or horseriders, as the case may be, have been systematically or even occasionally turned back.
- (6) If notices have been displayed clearly denying the existence of any public right of way.

In respect of (4), (5) and (6) local authorities should be on their guard against cases where such action has only been taken recently and there are good reasons to suppose the paths are public. These should be considered and marked as public, though disputed.

* See in particular *The Dedication of Highways*, by Humphrey Baker, M.A. Price 1s. (Which has been revised in light of the new Act and will be re-issued soon.)

3. MARKING THE MAPS

As the inspection of all these maps and documents, and consideration of all other evidence bearing on the question, proceeds, the information obtained should be checked, where necessary, by walking the paths, and the Committee should mark on the six inch Ordnance sheets the ways which appear to them to be public, on the following principles:—

They should mark with a single continuous line for each way and number as explained in (h) below (both in *ordinary* pencil at this stage):—

- (a) All public rights of way which were set out by an Inclosure Award and actually came into use by the public, and all which are shown as public in maps deposited by owners under Section 1 (4) of the Rights of Way Act, 1932.
- (b) All ways which are known to have been repaired at the public expense, or are provided with stiles or footbridges which have been so repaired, or have been sign-posted as public by County, District, or Parish Council.
- (c) All highways which the public have a right to use with vehicles, e.g., public cart-roads and lanes, including green (i.e., unmetalled) lanes, but which are mainly used as footpaths or bridleways. }
- (d) All ways which have been expressly "dedicated" in writing, or which are believed to have become "dedicated" in consequence of public use, as explained in section (2) (iv) above. These may include a public right of way on foot on a towpath. They may also include public rights of footway or bridleway over accommodation roads which are not open to the public with vehicles. These should be marked as footpaths or bridleways. Prohibitory notices referring to such roads (e.g., "Private Road" or "No Thoroughfare") unless they clearly deny any public right of way, can be disregarded as being intended to refer to vehicular traffic and not to a public right of passage on foot or on horseback. CHD
- (e) In general, all paths, even though their public status is now disputed by the owner, which have any of the characteristic attributes of public paths mentioned under Section 2 (v) above, unless they are obviously private. Evidence may be forthcoming later to show how they are public, or no one may object to their inclusion.

Special care should be taken to include any paths believed to be public but omitted from the Ordnance Survey.

They should mark with a single broken line (-----), again only lightly in *ordinary* pencil in the first instance:—

- (f) All paths about which there is any reasonable doubt. Further information about them should be obtained. It will probably be necessary to collect evidence of their use by old inhabitants.

If there is sufficient evidence from which it is reasonable to conclude that there may be a public right of way, the Committee should decide to treat it as public and should mark in the path firmly with a continuous line; if the evidence is insufficient the broken line should be rubbed out.

Having marked in all the ways which are ascertained to be public from maps, other documents, and local knowledge, the Committee should now:—

- (g) Walk over the whole of the reputed public ways in the parish, to confirm that they exist and to note their condition: to ensure that they have not omitted any path, and to enable them to complete the numbering and other marking of the maps as explained below, and to prepare the schedule, explained in section 5 below.

- (h) The paths or sections of paths (see further below) should be separately numbered on the map or maps, starting with 1 for each parish; detailed remarks about status and condition being given under corresponding numbers in a schedule accompanying the map or maps.

Every junction of two or more paths must be the starting point for a fresh number for each path.

For ease of reference, it will be advisable to break up any path, which is of considerable length, into separately numbered sections, the end of each section corresponding with some incidental feature such as a river, road, or rail crossing, or even a stream or sharp bend. *Each section thus separately numbered will count as a separate path.*

The number of each path should be placed on the map as closely as possible to its starting point, this being clearly described at the beginning of the entry, referring to that path in the schedule.

The order and direction of numbering should be on some systematic and consistent basis throughout the parish.

- (i) Public paths should be distinguished on the maps (in the first instance in *ordinary* pencil) with the symbols "F.P.", "B.R.", "C.R.F.", or "C.R.B.", as explained in section 4 below, irrespective of what is printed on the Ordnance Survey.

- (j) It is advisable to show on the maps with the appropriate symbol suggested in section 4 below, the position of every stile, gate, or other means of passage on a public path, and of direction posts and notice-boards referring to it. In this connection steps on a locked gate should be considered as stiles. Such marking of means of passage, etc., would facilitate the subsequent maintenance of public paths.

- (k) Obstructions are of two kinds: (i) Unlawful; (ii) Due to neglect. Both kinds should be marked with "O" except for barbed wire which merits a separate symbol. Details showing the nature of the obstruction should be recorded in the schedule.

- (l) Where a ferry provides a means of passage for the public across a river or other water which interrupts the course of a public path, enter the word "Ferry" on the map, with details (if known) in the schedule.

- (m) Highways which the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths or bridleways, should be marked on the map "C.R.F." or "C.R.B." as explained in section 4 below, with a note in the schedule also that their main use is as a footpath or bridleway as the case may be.

- (n) Use arrows, where necessary, on the map to indicate the exact site of stiles, obstructions, etc.

- (o) When all the information is complete, the lines and numbers of the paths and all the various symbols should be inked in. Before doing this it would be as well to walk all the paths again for a final check.

It will also be found helpful to mark the parish boundary clearly in a heavy black *broken* line.

Once the numbers have been inked in, they should not be altered again before the maps are submitted to the Surveying Authority. If a path is found at this late stage to have been wrongly included, strike out its number and make a note in the schedule but do *not* renumber all the paths.

- (p) The names and addresses of the persons who carried out the survey and the dates between which the survey was carried out should be inserted at the bottom of the map or maps.

4. THE USE OF SYMBOLS

The use of uniform symbols on the maps will obviously facilitate the work of the survey. Nearly all the following have been in use for a number of years and have been found satisfactory, and it is suggested that they be adopted. New composite symbols have been devised in two cases only (C.R.F. and C.R.B.) to meet the present purpose.

Symbols, where used, should be as few, as short and as clear as possible. All marking of symbols on maps should be made in the first instance in *ordinary* pencil.

The information required falls under four heads: —

- (1) The kind of path.
- (2) The position and nature (e.g., stile) of all means of passage.
- (3) The position of all obstructions, notice-boards and diversions.
- (4) The condition of paths and of their means of passage.

SYMBOLS TO BE USED IN MARKING MAPS

(Mark the symbols in CAPITALS)

KIND OF PATH	Mark
Footpath	F.P.
Bridle Road (including Driftway for cattle)	B.R.
Public Carriage or Cart Road } mainly { (1) Footpath C.R.F.	
or Green (unmetalled) Lane } used as { (2) Bridleway C.R.B.	
MEANS OF PASSAGE	
Cartbridge	C.B.
Footbridge	F.B.
Stepping Stones	S.S.
Fieldgate	F.G.
Bridle or Hunting Gate (usually about 5ft. wide)	B.G.
Wicket Gate	W.G.
Kissing Gate	K.G.
Turnstile	T.
Stile	S.
Gap (in fence or hedge)	GAP.
Finger or Direction Post	D.
Hurdles	H.
Posts	P.
Rails or Bars	R.
Low Fence	F.

OBSTRUCTIONS, NOTICE-BOARDS, DIVERSIONS

Obstruction	O.
Notice-board	N.
Barbed Wire	B.W.
Former course of path diverted or closed	/-/-/-/-

CONDITION OF PATHS, STILES, ETC.

Where a path is ill-defined or a stile, gate, etc., is in defective condition, a bracket should be placed round the symbol, e.g.: (F.P.), (F.B.). Details should be given in the schedule.

5. THE SCHEDULE.

This will accompany the maps and will form part of the survey. It will be the basis for the "Statement" which the Act requires that every Surveying Authority should prepare, containing, as respects any public path or other way shown on the "Draft" map, "such particulars appearing to the Authority to be reasonably alleged as to the position and width thereof, or as to any limitations or conditions affecting the public right of way thereover, as in the opinion of the Authority it is expedient to record in the Statement." Entries in the schedule should be concise but should contain all the detailed information about each path which cannot be conveniently recorded on the maps but is necessary for the purposes of the survey, or likely to be helpful to the Highway Authority in respect of its duty to maintain all public paths.

- (a) For the schedule it would be most convenient to purchase (unless supplied free officially) two sets of cards, postcard size, or of loose-leaf sheets, and to use one card or sheet for each path having a separate number on the map, or a continuous log-sheet can be made, provided that each path is entered under its own number.

The duplicate set of cards or loose-leaf sheets or log-sheet should be similarly entered up and retained by the Parish Council.

- (b) Entries in the schedule should be numbered to correspond with each path separately numbered on the map. Directly after the number give the symbol distinguishing the status of the path, e.g., F.P., and if considered helpful, the name of the path or its ultimate destination; *next describe its starting point* and then give concise information about such features occurring on the path, including symbols shown on the map, which require further explanation; for example, the nature of obstructions, the full wording

of notice-boards or direction posts, the nature of damage or of repairs required, etc., etc.

Next mention the grounds for believing the path to be public (if known) as briefly as possible, e.g., "Awarded" or "Repaired at public expense (with date)" or "Mentioned in minutes of Parish Council dated when second stile was repaired by the Parish Council."

It might be helpful to the Surveying Authority to add a brief note on the general condition of the path and of the means of passage along it.

Finally the names and addresses of the persons who carried out the survey and the dates between which it was carried out, should be inserted at the bottom of each entry or, if all the paths in the parish have been surveyed by the same persons in the same season, at the end of the completed schedule.

- (c) Stiles and gates should be described in the schedule in more detail, where necessary, e.g., "with" or "without steps," "squeezer stile," "bachelor gate," etc.
- (d) Where a path is ploughed, the stretch over which it is ploughed should be described and its position identified, in the schedule; for example, "path ploughed in field after first stile" or "ploughed for 150 yards after second footbridge," and it should be stated (if known) whether it has been ploughed from time to time throughout living memory, or only recently.
- (e) Where a path is metalled, the metalled stretch should be similarly described, and its position identified, in the schedule.
- (f) If the surveying authority require particulars to be furnished of the width of any public paths, these should be given in the schedule, as far as possible. If, for example, a way was set out by an Inclosure Award as a public footpath 4 feet wide, or a public bridleway 8 feet wide, these widths can and should be specified. Again, there is a legal presumption (in default of evidence to the contrary) that where a way runs between defined boundaries such as hedges or walls, the public right of passage extends over the whole width between those boundaries, and this width also can be specified. Where, however, a path runs in the open, though the width dedicated to public passage may be, and often is, greater than that of the "beaten" track, it will seldom be possible

to ascertain exactly what that greater width is, and in such cases no width should be stated, unless proof of it can be produced which would satisfy a court of law.

- (g) The kind of record that should be made may be gathered from the following specimens:—

(1) 12 F.P. to Norton. Starts in High Street from wicket gate beside White Cottage; first stile has stepping board; in next field path ploughed for 100 yards (throughout living memory); second stile consists of steps on locked gate, obstructed one strand barbed wire along top; footbridge immediately after this stile has handrail missing; path in second field from footbridge ploughed (for first time in 1941); exit into West Lane 150 yards from West Farm (and not at West Farm as shown in O.S.) over ladder stile alongside locked farm gate and Notice-board "Public Footpath to Snorting." Path "Awarded"; well-defined throughout; all stiles and gates in fair condition. Walked . . . (date) . . . by A . . . B . . .

(2) 37. B.R. to Combe. Starts from the Wheatsheaf in N.E. direction over private metalled carriage road between hedges 120 yards to bridle gate on right. At start, Notice-board on left, "Private Road. Please Shut All Gates." From first bridle gate distinct path 6 to 8 feet wide along grass verges of three arable fields to bridle gate; over two meadows, then exit by bridle gate into Barrow Lane.

Used by the public for at least 80 years without objection. Tendency of owner to encroach on grass verges in arable fields. Direction Post is required at start of Bridle road.

(3) 38. B.R. (continuation of 37). Starts from Barrow Lane by fieldgate (broken), where Direction Post, "Bridle Road to Combe"; follows closely round east garden wall of Sykes Cottage; via two bridle gates into Cowleaze Wood; along ride through woods between banks and out by third bridle gate; bears round Spray Coppice into main Wotton-Combe road by fourth hunting gate (obstructed wire) where is Direction Post, "Bridle Road to Wotton" (requires repainting). First bridle gate by Sykes Cottage repaired by County Council 1926. 37. and 38. walked (or ridden) . . . (date) . . . by C . . . D . . .

6. PREVIOUS SURVEYS

Where a previous Map and Schedule of all public rights of way have been made, there will, of course, be no necessity to make a complete survey again. It will only be necessary to perambulate all paths again, and to bring the previous Map and Schedule up to date, keeping in mind the provisions of the new Act and these instructions in order to secure uniformity of presentation.

7. ANNUAL REVIEW

All public paths should be systematically perambulated once a year, and a report should be presented to the Parish Council upon their condition at each perambulation. It is suggested that Rogation Sunday might be a suitable day for this annual perambulation, as it is already associated with the ancient custom of "beating the bounds."

The copy of the original schedule kept by the Parish Council should be amended in the light of changes made (if any) in the "definitive" map deposited by the Surveying Authority, but on no other account. If any supplementary notes are required as a result of an annual review, they can be made on separate cards, loose-leaf sheets or pages, and should be signed and dated, and a copy kept before they are sent to the County Council for action.

8. THE RIGHTS OF WAY ACT, 1932

For the purpose of surveying and surveillance how far is the Rights of Way Act, 1932, affected by the new Act?

- (i) The principle that a public right of way can arise by presumed dedication will *not* be affected.
- (ii) Under the 1932 Act it was necessary in some cases (for example, where the land over which the path runs has been in the possession of someone who could not dedicate a public right of way over it, such as a tenant for life under a family settlement) to prove 40 years' public use (instead of 20) to establish dedication. This distinction is abolished by the new Act, and 20 years' use will be sufficient in all cases.
- (iii) The right of the owner under Section 1 (3) and (5) to erect notices will still remain, and Parish Councils should be alert to challenge notices erected by owners on public paths.

- (iv) Section 1 (4) which gave an owner the right to deposit maps and statements and statutory declarations admitting or denying the public nature of rights of way, will remain but will be ineffective in respect of paths shown as public on the definitive map and all new paths created by public path agreements or orders under the New Act.
- (v) Section 1 (7) which explains the incapacity of a Corporation, etc., in possession of land for public or statutory purposes to dedicate a right of way where this would be incompatible with such public or statutory purposes; Section 1 (8) which defines land as including land covered with water; Section 2 (2) which states that there is nothing to prevent the dedication of a highway being presumed on proof of user for any less period than 20 years, etc.; Section 3 which empowers Courts to take into consideration any map, plan or other relevant document that is tendered in evidence; and Section 4 which safeguards the interests of the person entitled to a remainder or reversion of the property, will all remain operative.

9. CONCLUSION

The first complete survey will constitute a kind of "Domesday" book of Rights of Way, but its value will depend on its accuracy. The more thorough the preparatory work, the less trouble subsequently to all concerned. Carefully prepared maps and notes will furnish reliable information to the Surveying Authority. Careless work may lead to protracted, vexatious, and expensive disputes. At the periodic revision the District and Parish Councils may again be called upon to supply information, and they will therefore have to keep in touch with local developments. The powers given to Borough and District Councils to create new public paths will mean that they must keep themselves informed of new local needs.

Although the legal responsibility for maintaining all public paths, which has been stated to include the removal of obstructions, is placed clearly on the Highway Authority, the Act does not repeal Section 13 (2) of the Local Government Act, 1894, or Section 26 of the same Act. Parish Councils therefore still have powers under Section 13 (2) to carry out minor repairs and will undoubtedly be expected to use them. They will be well advised to do so in their own interests:—

- (i) In order to retain one of their most important functions;
- (ii) because they should be able to carry out such minor repairs more quickly and cheaply than the higher authority.

Similarly, District Councils still have a duty, under Section 26, to remove obstructions. If these Councils cease to exercise these functions, they are bound to lose touch with local needs and developments, and to that extent will find it more difficult to represent the real needs of the locality for new paths, diversions, etc. Although the duty of creating new paths is laid on the District Councils by the new Act, it is highly desirable that Parish Councils should report the need for new footpaths and obstructions of existing ones to the District Councils, and cases of serious lack of repair to the County Council.

The Commons, Open Spaces and Footpaths Preservation Society will continue to give advice to its members on any doubtful points that may arise and will be pleased to assist with legal advice any other local authority in serious difficulty over this survey.

Councils will find their general powers with regard to the preservation and repair of footpaths described in two pamphlets, issued free to members of the Society, entitled respectively (1) *The Maintenance of Public Ways*, and (2) *The Powers and Duties of Parish Councils with Regard to Public Rights of Way*. These can be obtained on application to the Secretary, 71 Eccleston Square, Westminster, S.W.1. These pamphlets have been revised in the light of the new Act and will shortly be re-issued.

National Parks and Access to the Countryside Act 1949
Staffordshire County Council Rights of Way Survey - Waterhouses Parish Survey Map 1954
Source: Staffordshire Record Office - Ref: C/P/138/72



APPENDIX A**RUPPs – the historical context**

The classification of “Road Used as a Public Path” or RUPP was a creation of the National Parks and Access to the Countryside Act 1949. This was the legislation that first introduced a requirement to produce a legal record of Public Rights of Way, the Definitive Map and Statement (DMS). In particular, section 27 of the NPACA49 defined the categories of right of way to be shown on a DMS as follows:

“footpath” means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road;

“bridleway” means a highway over which the public have the following but no other rights of way, that is say a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway;

“public path” means a highway being either a footpath or a bridleway;

“road used as a public path” means a highway other than a public path, used by the public mainly for the purposes for which footpaths and bridleways are so used.

Although on the face of it, this definition implies that RUPPs carry vehicular rights, section 32(4)(b) provided that depiction as a RUPP was conclusive evidence only of a right of way on foot and on horseback or leading a horse, without prejudice as to whether any higher rights also existed.

The confusion caused by this definition led to provisions within the Countryside Act 1968 (Part III, Schedule 3) for a Special Review for the reclassification of RUPPs as either Byways Open to All Traffic (BOATs), bridleways or footpaths. Paragraph 10 of Schedule 3 set out criteria for the reclassification including the existence or otherwise of vehicular rights, the suitability of the route for vehicular use and whether the extinguishment of vehicular rights would cause undue hardship.

On the basis of this a number of authorities, notably Staffordshire, undertook a major reclassification of their RUPPs and downgraded many to either bridleway or footpath. A challenge to this arose and led to the judgement of the Court of Appeal in *R v Secretary of State for the Environment Ex parte Hood [1975] QB 891 (C.A.)*. The upshot of the Hood case was that nothing in the 1968 Act overruled the effect of s32(4)(b) NPACA49 – that depiction as a RUPP was conclusive evidence of the existence of at least bridleway rights.

However, due to a limited period for challenging the result of a special review, those RUPPs already reclassified as footpath have generally remained recorded as such. The impact of the judgement was acknowledged by Government. Circular 123/77 set out guidance on how highway authorities should approach future RUPP reclassification (under the Countryside Act 1968) and advised in paragraph 6:

"There will, however, be cases where some former RUPPs will be shown as footpaths on definitive maps, resulting from the Special Review. This could be the case where the Special Review was completed prior to the Hood decision ... In such a case it appears to be open to the county council at their next general review to have regard to the Court's decision and consider the use of their powers under Part 1 of Schedule 3 to the 1968 Act to restore the footpath to its former status of RUPP - though they appear to have no power to reclassify it

a second time. In the meantime the Secretaries of State consider it desirable that county councils should, on the definitive map resulting from the Special Review, put some suitable note against such footpaths in order that the general public may be aware of the position".

In paragraph 7 it advised:

"The Secretaries of State recognise that certain anomalies are inherent in the position as described above. If experience shows that a significant number of these cannot be dealt with satisfactorily under local authorities' other powers in consultation with the various interests concerned the Secretaries of State will be willing in due course to consider the possibility of amending legislation".

No specific legislation was introduced to address this issue and instead the general "continuous review" provisions of the Wildlife & Countryside Act 1981 came into force. A question mark remained as to the effect of completed special review reclassifications on higher rights but subsequent case law – Riley (1990) and Kind (2005) – has established that the effect of the reclassification under special review was not to extinguish any higher rights that might have existed over the routes.

The impact of the closure of the DMS in 2026, however, will be to extinguish such higher rights and thus it is imperative that the true status of these routes is established before then.

It is clear from the above that it is open to a person to make an application for a Definitive Map Modification Order (DMMO) (a Schedule 14 application) to upgrade a RUPP previously reclassified as a footpath to either a bridleway, restricted byway or – subject to the provisions of the Natural Environment & Rural Communities Act 2006 – as a byway open to all traffic.

For any such application to be successful, it must be supported by evidence, at least one item of which must be new, in the sense that it has not been previously considered by the Council during the reclassification process (or any subsequent formal examination of the status of the route).

Ultimately, the test to be applied is "on the balance of probabilities". It is the position of the BHS that given the conclusive effect of s32(4)(b) NPACA49 - that RUPPs were at least of bridleway status - that the evidential threshold is relatively low; in the absence of evidence that only footpath rights existed over a route, then only limited (new) evidence of higher status will be sufficient to demonstrate "on the balance of probabilities" their existence and thus enable the making and confirmation of a DMMO.

The RUPP Reclassification Process in Staffordshire

According to data supplied by Staffordshire County Council, there were originally 596 RUPPS recorded on the first Staffordshire Definitive Map. 305 of these - 51% - were reclassified as footpaths but the position varies significantly depending on which part of the county is being considered. The Special Review was carried out on an area-by-area basis and started in what is now the Staffordshire Moorlands. The review was completed here before the Hood judgement was available whereas in other areas much more limited progress had been made. A summary by area is given below:

Area	Total No's of RUPPs	Total Footpath	% of Total
Staffordshire Moorlands	180	154	86%
Newcastle-under-Lyme	51	33	65%
Stafford	88	22	25%
Cannock Chase	39	13	33%
East Staffs	92	45	49%
Lichfield	52	7	13%
South Staffs	93	31	33%
Tamworth	1	0	0%
Total	596	305	51%

On the face of it, and in the context set out earlier in the paper, these figures would appear to suggest that a large number of routes were incorrectly reclassified.

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3 May 2020

References

Legislation & Guidance:

- [National Parks and Access to the Countryside Act 1949](#)
- [Countryside Act 1968](#)
- Circular 123/1977 – see BBR05 at <https://www.ramblers.org.uk/advice/rights-of-way-law-in-england-and-wales/the-blue-book/the-blue-book-extra.aspx>
- [Wildlife & Countryside Act 1981](#)

Case Law:

- R. v. S. of S. for Environment, ex parte Hood [1975] QB 891 (C.A.)
- R. v. S. of S. for Environment, ex parte Riley [1989] JPEL 921 as reported in Byways & Bridleways <https://www.dropbox.com/s/34mkjv35c1dezkb/B%26B1989.pdf?dl=0>
- R v SoS Environment Food & Rural Affairs oao Kind [2005] EWHC 1324 (Admin) <http://www.bailii.org/ew/cases/EWHC/Admin/2005/1324.html>

Articles:

- Upgrading of Reclassified RUPPs - George Laurence - s8.2 Rights of Way Law Review
- Wrongly Reclassified RUPPs – Alan Kind – s8.2 Rights of Way Law Review
- The History of RUPPs – Ann Holt – s1.1 Rights of Way Law Review