

## **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	<b>86%</b>
Newcastle-under-Lyme	51	33	<b>65%</b>
Stafford	88	22	<b>25%</b>
Cannock Chase	39	13	<b>33%</b>
East Staffs	92	45	<b>49%</b>
Lichfield	52	7	<b>13%</b>
South Staffs	93	31	<b>33%</b>
Tamworth	1	0	<b>0%</b>
<b>Total</b>	<b>596</b>	<b>305</b>	<b>51%</b>

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