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**GENERAL GUIDANCE ON PUBLIC RIGHTS OF WAY MATTERS**

**Introduction**

1. The purpose of this Advice Note is to provide some general background information on public rights of way and some of the various types of rights of way orders which are submitted to the Secretary of State (SoS)/the Welsh Ministers (WM) for confirmation. Further guidance on rights of way orders can be found in Department for Environment Circular 1/09<sup>1</sup> sections 4 and 5. Information may also be found in 'A guide to Definitive Maps and changes to Public Rights of Way' published by Natural England (revised October 2008)<sup>2</sup>. The relevant criteria which an Inspector needs to consider in determining an opposed order are set out at section 6 of Guidance on Considering Objections to Definitive Map and Public Path Orders in England<sup>3</sup> and Wales<sup>4</sup>.
2. The Advice Note also includes three appendices; Appendix 1 gives various statutory definitions of rights of way, Appendix 2 provides a definition of local authorities in the context of the relevant legislation and Appendix 3 sets out relevant primary and secondary legislation and guidance.
3. This Advice Note should only be regarded as a basic guide to, rather than an authoritative interpretation of, the law on public rights of way, it is publicly available but has no legal force.
4. Some 140,000 miles of the Rights of Way network are recorded on definitive maps in England and Wales. These were originally prepared under Part IV of the National Parks and Access to the Countryside Act 1949. The Act covered England and Wales but there were some areas, notably the administrative county of London and those of county boroughs, in respect of which there was a choice of whether to adopt the relevant provisions. Fully developed areas could also be excluded by resolution of county councils.

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<sup>1</sup> <https://www.gov.uk/government/publications/rights-of-way-circular-1-09>

<sup>2</sup> <https://www.gov.uk/government/publications/definitive-maps-of-public-rights-of-way-change-the-legal-records>

<sup>3</sup> <https://www.gov.uk/government/publications/rights-of-way-guidance-booklet>.

<sup>4</sup> [https://gweddill.gov.wales/topics/environmentcountryside/consmanagement/rights-of-way-and-wider-access/countryside-area/?lang=en&\\_ga=2.76871893.1310986754.155661412](https://gweddill.gov.wales/topics/environmentcountryside/consmanagement/rights-of-way-and-wider-access/countryside-area/?lang=en&_ga=2.76871893.1310986754.155661412)

5. Under section 56 of the Wildlife and Countryside Act 1981 (WCA 81), a definitive map and statement is conclusive evidence of certain particulars contained in it, as at the relevant date (defined in section 56(2)). The general rule is that where a map shows a way as of a particular category of highway it is conclusive of certain public rights of way over it at the relevant date, but that is without prejudice to the existence of higher rights. So, for example, where it shows a footpath that is conclusive of public rights of way on foot, but not that there are not bridleway or carriageway rights.
  
1. There is the maxim "once a highway, always a highway". Once a highway has come into being by whatever means it continues indefinitely no matter whether it is used or not. In the case of *Harvey v Truro RDC*<sup>5</sup> Mr Justice Joyce said:
 

"Mere disuse of a highway cannot deprive the public of their rights. Where there has once been a highway no length of time during which it may not have been used will preclude the public from resuming the exercise of the right to use it if and when they think proper".
  
6. Public rights of way can be divided into :-
  - i. Footpaths (FPs)
  - ii. Bridleways (BWs); and
  - iii. Restricted byways (RBs); and
  - iv. Byways open to all traffic (BOATs)

Statutory definitions for these categories of highway can be found in Appendix 1.

7. In addition, ways described as roads used as a public paths (RUPPs) can be found in many early definitive maps. Section 54 of WCA 81 required that all RUPPs be reclassified as a FP, BW or BOAT and many were, but this requirement was superseded in May 2006 when sections 47-51 of the Countryside and Rights of Way Act 2000 came into force. This provided for all RUPPs still shown on definitive maps on 2 May in England and 11 May in Wales to be automatically converted to restricted byways. The expression "road used as a public path" is no longer used to describe ways in definitive maps.
  
8. Rights of way can be created, extinguished or diverted by order under statute; DMs can be modified by orders under Part III of the WCA 81. The procedures to be followed and the extent or nature of the changes which may be made will be determined by the relevant statutory provision, and of course how the courts have interpreted it. Before an order made by a local authority may take effect, there is usually a requirement that it is confirmed, and where it is opposed (that is to say objections have been made to<sup>6</sup>) confirmation is required by the SoS or the WM.

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<sup>5</sup> [1903] 2 Ch 638

<sup>6</sup> In this Advice Note, "objections" includes "representations". Representations can be taken to mean letters or statements of support for the proposal or of a neutral nature neither supporting

9. Decisions by the SoS/WM on the confirmation of opposed RoW orders are usually taken by an Inspector appointed by the SoS/WM for the purpose.
10. The legislation relating to public rights of way was amended by the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 so as to apply most of the existing provisions applicable to footpaths and bridleways also to restricted byways. These Regulations came into force on 2 May 2006 in England and 11 May in Wales.

## **Statutory Provisions**

### ***Highways Act 1980 Creation of Rights of Way***

11. FPs, BWs and RBs may be created by agreement between a local authority and anyone having power to dedicate such a way over the land in question, being in the local authority's area (Highways Act 1980 (HA 80), section 25). Parish/community councils also have powers to create FPs and BWs by agreement if in their opinion it would be beneficial to the inhabitants of the parish or community (HA 80, section 30). Since they are created by agreement, these cases are not submitted to the Inspectorate for determination but may be relevant to other proposals.
12. A local authority may also create by order, under section 26 of the HA 80, a FP, BW or RB. An authority may only make an order if it appears to it that there is a need for such a way over land in its area and provided it is satisfied that it is expedient that a new right of way should be created (see section 26(1)). In deciding whether or not it is expedient, the authority must have regard to the extent to which the way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area and, the effect which the creation of the way would have on the rights of persons interested in the land. In looking at this last factor, specific account is to be taken of the provisions for compensation under section 28 of the HA80.
13. In addition to the above, section 29 of the HA 80 (as amended by section 57 of the Countryside and Rights of Way Act 2000) places a duty on local authorities in making an order to have due regard to the needs of agriculture<sup>7</sup> and forestry and to the desirability of conserving flora, fauna and geological and physiographical features. (Section 29 does not place any such duty on the SoS/the WMs).
14. As with all Highways Act orders, if objections or representations have been "duly made" (i.e. they have been submitted in time and in the manner set out in the notice), and the order making authority (OMA) still wish to continue with the order, it has to come to the SoS/WM for confirmation. Unless the objections/representations are withdrawn, either a public inquiry or hearing will be held, or if the parties agree, the matter will be dealt with

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nor opposing the order. Even if the order making authority manage to overcome all the objections to an order it will still need to be confirmed by the SoS/WM if there are any "representations" outstanding.

<sup>7</sup> "agriculture" includes the breeding or keeping of horses.

by way of written representations. Where, at an inquiry or hearing questions of compensation under section 28 arise, Inspectors should refer them to the OMA and indicate that if agreement cannot be reached it would be a matter for the Lands Tribunal.

### **Public Path Extinguishment Orders**

15. A footpath, bridleway or restricted byway can be stopped up by an order made by a council, if it appears to them that it is expedient on the ground that the way is not needed for public use (HA 80, section 118(1)).<sup>8</sup> Once again, if objections are received and not withdrawn the order will come to the SoS/WM for confirmation.
16. Section 118(2) sets out conditions for confirmation of an order. The decision-maker must be satisfied that it is expedient to confirm the order. Whether it is expedient is to be answered, though not exclusively, by reference to a number of matters. These are: the extent which the way would, apart from the order, be likely to be used by the public and; the effect that extinguishment would have on the land served by the way, account being taken of the provision for compensation in section 28 as applied by section 121 of the HA 80.
17. These two tests, which appear in both subsections 118(1) and 118(2), were considered in the *Stewart* and the *Cheshire County Council* cases<sup>9</sup>. The use of the word 'expedient' in subsection (2) means that other relevant considerations can be taken into account when deciding whether an order is expedient, in addition to those expressly set out in the subsection. However, this test in subsection 118(2) is not the same as in subsection 118(1). At the confirmation stage, the decision-maker does not have to be satisfied that the way is not being used in order to conclude that it is not needed for public use. An Inspector could confirm an order even if he/she thought the way was likely to be used to a limited degree but was not actually needed.
18. The *Stewart* case also considered the situation where a footpath could not be used because it was obstructed. Section 118(6) requires temporary obstructions to be disregarded when considering the merits of the order. In *Stewart*, the court found that a pine tree with a girth of 2'6", a hedge 4' wide and 12' high and an electricity substation were capable of being temporary obstructions and could be disregarded under subsection (6).
19. As with section 26 creation orders (see paragraph 12 above) if a question of compensation arises at an inquiry, Inspectors should refer them to the OMA and indicate that if agreement cannot be reached it would be a matter for the Lands Tribunal.

### **Public Path Diversion Orders**

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<sup>8</sup> For extinguishment of ways over railways or tramways see HA 80, S118A.

<sup>9</sup> *R v Secretary of State for the Environment ex parte Stewart* [1980] JPL 175 and *R v Secretary of State for the Environment ex parte Cheshire County Council* [1991] JPL 537.

20. Footpaths, bridleways and restricted byways may be diverted by order of a council, under section 119(1) of the HA 80, if it appears to them to be expedient to do so in the interests of either the owner, lessee or occupier of land crossed by the way or of the public.
21. Section 119(2) specifies certain restrictions on what orders under section 119 may do in terms of altering a point of termination of the way. Subsections (2)(a) and (b) specify, respectively, that an order cannot alter the point of termination of the way:
  - if that point is not on a highway (e.g. it ends at the sea shore, or at a viewing point), or
  - (where it is on a highway) otherwise than to another point which is on the same highway, or another one connected with it, and which is substantially as convenient to the public.
22. It is the Inspectorate's view that section 119(2)(b) does not restrict the point of connection of the diverted footpath, bridleway or restricted byway to a highway that is immediately connected to the highway to which the path formerly terminated. However, there must be some connection between the highway on which the way in question terminated before its diversion and that on which it would terminate after the diversion. Whether that connection is as substantially as convenient for the public is a matter of judgement for the Inspector subject to the test of reasonableness.
23. Section 119(6) requires that before confirming a public path diversion order, the decision-maker must be satisfied that it is expedient in the interests of the owner, lessee or occupier of land crossed by the way or of the public. The Secretary of State takes the view that an inspector can confirm an order stated to have been made in both parties' interests, even if, in the Inspector's opinion, the diversion is expedient only in the interests of either of the owner/lessee/occupier **or** the public.
24. In addition, he must be satisfied that the way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which:
  - The diversion would have on the public enjoyment of the way as a whole;
  - The coming into operation of the order would have upon other land served by the existing way; and
  - The new way created by the order would have upon the land over which it is created.
25. In relation to the last two factors the subsection requires account to be taken of the compensation provisions in section 28 as applied by section 121 of the HA 80. As with creation orders and extinguishment orders (see paragraphs 12 and 15 above), where the question of compensation arises at an inquiry, Inspectors should refer them to the OMA and indicate that if agreement cannot be reached it would be a matter for the Lands Tribunal.

26. Section 119(6) was considered in *R (on the application of Young) V SSEFRA [2002] EWHC 844* and the view taken that subsection (6) has 3 separate tests to it.
- (i) Firstly, that the Order is expedient in terms of section 119(1), i.e. that in the interests of the owner, lessee or occupier of land crossed by the path or of the public, it is expedient that the line of the path be diverted but not so as to alter the point of termination if not on to a highway or to a point on the same highway not substantially as convenient to the public.
  - (ii) Secondly, that the diverted path will not be substantially less convenient to the public in terms of, for example, features which readily fall within the natural and ordinary meaning of the word 'convenient' such as the length of the diverted path, the difficulty of walking it and its purpose.
  - (iii) Thirdly, that it is expedient to confirm the order having regard to the effect:
    - (a) the diversion would have on the public enjoyment of the path or way as a whole;
    - (b) of the order on other land served by the existing public right of way; and
    - (a) of the new path or way on the land over which it is to be created and any land held with it.

There may nevertheless be other relevant factors to do with expediency in the individual circumstances of an order.

27. It is possible that a proposed diversion may be as convenient as the existing path but less enjoyable, perhaps because it was less scenic. In this event, the view in *Young* was that the decision-maker would have to balance the interests of the applicant for the order against those of the public to determine whether it was expedient to confirm the order.
28. Conversely, a proposed diversion may give greater public enjoyment but be substantially less convenient (perhaps because the diverted route would be less accessible or longer than the existing path/way, for example). In such circumstances, the diversion order should not be confirmed, since a diversion order cannot be confirmed under s119(6) if the path or way will be substantially less convenient to the public in consequence of the diversion.
29. Whereas section 118(6) provides that, for the purposes of deciding whether a right of way should be stopped up, any temporary circumstances preventing or diminishing its use by the public shall be disregarded, section 119 contains no equivalent provision. However, [it is the Inspectorate's view that] when considering orders made under section 119(6), whether the right of way will be/ will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing or diminishing the use of the

existing route by the public. Therefore, in all cases where this test is to be applied, the convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

30. It is the Inspectorate's view that a way created by a diversion order, may in part follow an existing path or road, the order should not be used to close a path where the whole of the alternative route is already subject to a public right of way<sup>10</sup>. The effect, otherwise, would be to enable the tests in section 118 to be side stepped as such an order would, in effect, be stopping up a right of way.
31. A diversion order can only amend the definitive map and statement insofar as the course or line of the right of way is concerned, it cannot alter the status of the way. For example, a diversion order can neither downgrade a bridleway to a footpath, nor upgrade a footpath to a bridleway. However, where, as set out above, a diverted route is coincident in part with an existing right of way, the status of either the existing or diverted right of way may in practice change as a consequence of the other right of way having a different status. Clearly, where two rights of way of differing status were coincident, the higher rights would prevail along the coincident section.
32. Express provision is made in section 118(5) of HA 80 for public path extinguishment orders to be dealt with concurrently with creation and diversion orders (both public path and rail crossing). When considering the confirmation of a public path extinguishment order, in particular the extent to which the highway would be likely to be used by the public apart from the order, regard should be had to the extent that the creation or diversion would provide an alternative to the way being extinguished (HA 80, section 118(5)).
33. When dealing with such orders concurrently, each order should be considered separately on its own merits and decisions made in each case. Consequently, a decision letter should specifically cover for each order those matters relevant to the consideration of whether it should be confirmed.

### ***Rail Crossing extinguishment orders***

34. Section 118A of the HA 80, inserted by the Transport and Works Act 1992 (TWA 92), gives councils the power to stop up, by order, a FP, BW or RB which crosses a railway, other than by tunnel or bridge. An order may be made if it appears to the council expedient in the interests of the safety of those members of the public who use or are likely to use the highway in question. In order to avoid the creation of a cul-de-sac, the section gives power to stop up the whole way up to the nearest highway over which there subsists a like right of way. An order may not be confirmed unless the decision-maker is satisfied that it is expedient with regard to all the circumstances. Factors expressly required to be taken into account include whether it is reasonably practicable to make the crossing safe for the public. Also relevant may be whether a diversion is more appropriate.

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<sup>10</sup> See *R v Lake District Special Planning Board, ex parte Bernstein*, The Times, February 3 1982.

## **Rail crossing diversion orders**

35. Similar powers to those contained in section 118A are contained in section 119A of the HA 80, also inserted by the TWA 92. Here the power is to make a diversion order. Again a council may only make an order if it appears to it expedient in the interests of public safety using or likely to use the FP, BW or RB. Such orders should only be confirmed if the criteria set out in section 119A(4) has been fulfilled. Again the test is one of overall expediency, in the determination of which the subsection sets out particular (but not all) factors to be taken into account.

## **Bridge or tunnel orders**

36. In dealing with applications for rail crossing orders authorities will need to consider whether a bridge or tunnel could be provided in place of a level crossing being stopped up or diverted. In this context, section 48 of the TWA 92 empowers the SoS/WM to make an order requiring the operator to provide a bridge or a tunnel or to improve an existing bridge or tunnel.

## **Creation agreements**

37. Section 25 of the HA80 allows highway authorities to enter into agreements with landowners to create new public footpaths and bridleways. These agreements are essentially a matter for the parties concerned. They do not require confirmation and do not come to the Secretary of State for determination. Although sometimes linked to diversion or extinguishment orders, there was, until recently, no express provision for such agreements to be taken into consideration when determining orders. Following a recent court of appeal judgement in the case known as *Tyttenhanger*<sup>11</sup>. The judges agreed that creation agreements which are conditional and rely on the confirmation of the order cannot be taken into account when determining orders. A sealed unconditional creation agreement already in force can be considered however.

## **Town and Country Planning Act 1990 Cases**

### ***Stopping up or diversion of FP or BW to enable development to be carried out***

38. Following a grant of planning permission, the local planning authority (LPA) may make an order to stop up or divert a FP, BW or RB if they are satisfied that it is necessary to enable that development to be carried out (TCPA 90, section 257). Similar powers are available to the SoS/WM (TCPA 90, section 247).
39. Before an order can be confirmed, or indeed made, it must be apparent that there is a conflict between the development and the right of way, such as an obstruction. An outline permission might not give the degree of certainty necessary to evaluate the impact that the development will have upon the way. However, the development does not need to be in the form of a

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<sup>11</sup> *Hertfordshire County Council v Secretary of State for Environment Food and Rural Affairs* [2006]



physical interference such as a building on the right of way. For example, a change of use may be sufficient.

40. Alternatively, following the amendments of section 257 by the Growth and Infrastructure Act 2013, an order may be made in anticipation of planning permission. However, an order made in advance of planning permission cannot be confirmed by either the authority or the SoS/WMs until that permission has been granted.
41. When Inspectors consider an order made under section 257, they should be mindful that the planning merits of the development itself are not at issue in the RoW case and Inspectors should not allow that matter to be re-opened. The weighing up of the planning merits and demerits will have been determined in favour of the development<sup>12</sup> (where planning permission has already been granted).
42. However, the Inspector does have latitude to consider wider issues. He should consider the overall public interest in diverting or stopping up a right of way and how it will affect those concerned. Considerations could include, for example, matters such as how the confirmation of the order would result in the loss of passing trade (which might be particularly relevant in view of the fact that there is no provision for compensation in relation to this type of order). Such issues may not be a material consideration at the planning stage. Furthermore, there are bound to be some matters which are overlapping – i.e. relevant to both the planning merits and the merit of whether or not an order should be confirmed.
43. The Inspector is not obliged to confirm an order, even if it appears necessary to enable the development to take place. There is discretion<sup>13</sup>. Non-confirmation of the order might be justified where the way proposed to be stopped up could be diverted instead, or the proposed diversion would not be the most suitable and the order could not be modified.
44. The power contained in section 257 is only available if the development, insofar as it affects the path or way, is not yet substantially completed<sup>14</sup>. If the development has been substantially completed another type of order would have to be made (e.g. under sections 116, 118 or 119 of the HA 1980).

### ***Land held for a planning purpose***

45. Section 258 of the TCPA 90 gives power to local authorities to make an order extinguishing footpaths, bridleways or restricted byways over land which they hold for planning purposes. An order may not be made unless the authority is satisfied either that an alternative is not required or that an alternative has been or will be provided.

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<sup>12</sup> *Vasiliou v Secretary of State for Transport* [1991] 2 All ER 77.

<sup>13</sup> *K C Holdings Ltd v Secretary of State for Wales (DC)* [1990] JPL 353

<sup>14</sup> *See Ashby and Dalby v Secretary of State for the Environment* [1980] 1 WLR 673 and *Hall v Secretary of State for the Environment* [1998] JPL 1055

## ***Surface mineral workings***

46. Section 261 of the TCPA 90 allows for orders to be made under section 247 or section 257 to temporarily stop up or divert a highway (in the case of section 257 orders, for footpaths, bridleways and restricted byways) for the purpose of enabling surface minerals to be worked. This is provided so that the highway can be restored to a condition not substantially less convenient to the public, after the minerals have been worked.

## **Acquisition of Land Act 1981 Cases**

### ***Extinguishment of non-vehicular rights of way***

47. Section 32 of the above Act enables acquiring authorities to make orders for the extinguishment of non-vehicular rights of way over land that is, or could be, or is proposed to be acquired compulsorily. Before making an order, the acquiring authority must be satisfied that a suitable alternative has been or will be provided (or that an alternative is not required) e.g. by way of a public path agreement or order.
48. Section 32 provides for restrictions on the order making power, such as on the time an order may affect an extinguishment and that the power contained therein may not be used where sections 251 or 258 of the TCPA 1990 apply.
49. Schedule 6 of the HA 1980 (see section 32(2) of the Acquisition of Land Act 1981) applies to the making, confirmation, validity and date of operation of orders under section 32.

## **Wildlife and Countryside Act 1981 Cases**

### ***Definitive Map Orders***

50. Surveying authorities (SAs) (usually a county council) are under a duty to keep their definitive maps under continuous review through making orders to modify them (see section 53(2) of the WCA 81). The duty includes making what are known as legal event orders. These orders in effect record changes to the network of RoW that are the result of the coming into operation of any enactment, instrument or similar event, such as a stopping up, creation or diversion order. Such orders do not come before the SoS/WM because they do not require confirmation to take effect (see section 53(6)).
51. Individuals may make applications for orders under section 53 to modify a definitive map, except for legal event orders (see section 53(5) of the WCA 81). If the SA refuses to make an order the applicant may appeal to the SoS/WM, who then has to be satisfied that an order should be made on the basis of the evidence submitted (see paragraph 4 of Schedule 14 to the WCA 81). This is normally done by means of written representations (a non statutory hearing/inquiry may occasionally be held if the Inspector considers it to be appropriate). If the SoS/WM considers that an order should be made, "he shall give to the authority such directions as appear to him necessary for the purpose".
52. Once an order (other than a legal event order) has been made, Schedule 15 to the WCA 81 requires that it is publicised. If it attracts objections or

representations it must come to the SoS/WM for confirmation. Decisions on the opposed orders which come before the SoS/WMs are usually taken by an Inspector appointed by the SoS/WMs for the purpose, following a local inquiry.

### **Modification orders under Section 53**

53. Orders to modify DMs made under section 53 of the WCA 81 fall into three distinct categories, which are set out in subsections 3(a), (b) and (c). These are:
- (b) orders to take account of "legal events", such as a creation, extinguishment or diversion orders, which have already taken effect;
  - (c) orders based on the creation of new or increased public path rights either on the basis of section 31 of the HA 1980 or by implied dedication at common law;
  - (d) orders based on the discovery by the SA of evidence, which when considered with all other evidence, shows that the DM should be modified in one of the ways specified in section 53(3)(c)(i) to (iii).
54. Section 53(3)(c)(i) to (iii) covers such matters as the addition of a way to a definitive map, its deletion, or its upgrading or downgrading to another category of RoW.
55. It is important to note that the purpose of definitive map modification orders and reclassification orders is to ascertain what rights exist. It is not, for example, to determine the suitability of a way for particular types of traffic or whether use of a way may result in loss of amenity or environmental damage (see Advice Note 7). If, for example, motor vehicular rights are found to exist over a way (and remain, despite the extinguishing effect of NERC 2006) but such use is thought inappropriate, then the local traffic authority could consider exercise of its powers under the Road Traffic Regulation Act 1984

### **The effect of the Natural Environment and Rural Communities Act 2006 (Nerc)**

2. Sections 66 - 71 came into effect in England on 2 May 2006. Section 67(1) extinguished all public rights for mechanically propelled vehicles that were not already recorded on the definitive map on that day, subject to certain exceptions which are listed in sub-sections 67(2) and 67(3). Provisions are made for private rights to be retained where MPV access to land is necessary.
3. In dealing with WCA 81 orders where vehicular rights are at issue, it will still be necessary to reach a conclusion on whether a public vehicular right of way has been shown to exist (prior to 2 May 2006) before then going on to decide whether the MPV rights have been extinguished by virtue of S67 of NERC 2006. If they have not, because one or more of the exemptions apply, BOAT status may be appropriate; if extinguished, the way may be proposed as a restricted byway. Further information can be

found at -

<http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/wildlife-countryside/pdf/access/prow/nercactv5.pdf>

### **Evidence**

4. Guidance on various documents frequently submitted as evidence in connection with orders under the 1981 Act, and how paths become dedicated through long user evidence, is set out in the Consistency Guidelines<sup>15</sup>.
5. Use of footpaths or bridleways by mechanically propelled vehicles has been illegal since the 1930's. Sections 66 and 67 of Nerc 2006 put a stop to the implied creation of new public rights of way for mechanically propelled vehicles, preventing post-1930 use of a way by a mechanically propelled vehicle from giving rise to any future public right of way.

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**DEFINITIONS**

1. Public rights of way are defined as follows:-

Footpath	A highway over which the public have a right of way on foot only, not being a footway <sup>16</sup> (see section 329(1) of the HA80 and section 336(1) of the TCPA90), or 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 (see section 66(1) of the WCA81).
Bridleway	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 (see section 329(1) of the HA80, section 66(1) of the WCA81 and section 336(1) of the TCPA90). It should also be noted that section 30(1) of the Countryside Act 1968 gives the public the right to ride a bicycle on any bridleway but, in exercising that right, cyclists must give way to pedestrians and persons on horseback. Section 30(4) provides that section 30(1) shall not affect any definition of "bridleway" in the Countryside Act 1968 or any other Act.
Restricted Byway	A highway over which the public have (a) a right of way on foot, (b) a right of way on horseback or leading a horse, and (c) a right of way for vehicles other than mechanically propelled vehicles; with or without a right to drive animals of any description along the highway but no other rights of way (see section 48(4) of CROW 2000).
Byway Open to all Traffic (BOAT)	A highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used (see section 66(1) of the WCA81 and Advice Note 8).
Public Path	A highway being either a footpath, bridleway or restricted byway (see section 66(1) of the WCA81, as amended by paragraph 9 of Schedule 5 CROW 2000, and section 27(6) of the NPACA 49).
Road Used as a Public Path (RUPP) <sup>17</sup>	A highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used (see section 27(6) of the National Parks and Access to the Countryside Act 1949 (NPACA49 and Advice Note 12).

<sup>16</sup> "Footway" means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only (section 329(1) of the HA80)

<sup>17</sup> On commencement of section 47 of CROW 2000 on 2 May 2006 (in England) and 11 May 2006 (in Wales) the expression RUPP ceased to be used in any definitive map or statement to describe any way. Those ways shown as RUPPs on the commencement dates were instead to be regarded as restricted byways.

2. Occasionally the symbols CRF (carriageway used mainly as a footpath) and CRB (carriageway used mainly as a bridleway) are used on definitive maps alongside the notation for RUPPs. These symbols were recommended for use (see cancelled Circular 81/50 of January 1950 and accompanying memorandum) by parish and district councils when compiling information on public rights of way in their area, and for use by surveying authorities in the preparation of their draft (definitive) map and statements to identify public carriage or cart roads according to whether they were mainly used as footpaths or bridleways. They were not intended for subsequent use by surveying authorities as an addendum to the record in the definitive map and statement, to supplement the notation required under statute.
3. In practice some authorities misunderstood the advice and used the symbols on their definitive map and statement. The symbols had no statutory status. Consequently, where they have been used they do not confirm the existence of public vehicular rights of way.

**DEFINITIONS - A LOCAL AUTHORITY**

1. When comparing the procedures for Order making and confirmation within the three different Acts it is helpful to outline the different definitions of a local authority (and a council where appropriate). These can be found below

Wildlife and Countryside Act 1981	
With respect to:  Sections 53 and 54  and  Schedule 14 and 15	“Local authority” means a non-metropolitan district council, a parish council or the parish meeting of a parish not having a separate parish council but, in relation to Wales, means a community council.  (see Schedule 14(5) and 15(13))
Highways Act 1980	
With respect to:  Sections 26, 118, 118A, 118B, 119, 119A and 119B  and  Schedule 6	“Council” means a county council or local authority.  “local authority” means - (i) a billing authority or a precepting authority, as defined in section 69 of the Local Government Finance Act 1992;...[See Paragraph 3(3) of Schedule 6]  Section 69 (1) of the 1992 Act states that a precepting authority means a “major precepting authority” which has the meaning given by section 39(1), namely - (a) a county council in England ...; (c) a parish or community council;: (d) the chairman of a parish meeting ..., or a “local precepting authority” which has the meaning given by section 39(2) of the Local Government Finance Act 1992.
Town and Country Planning Act 1990	
With respect to:  Sections 257, 258 and 261  and  Schedule 14	“Competent authority” means  (a) in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of a permission granted by the

Secretary of State, who would have had power to grant it; and

(b) in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.

(see Section 257(4))

“Local Authority” means (except in section 252...) (a) a billing or precepting authority (except the Receiver for the Metropolitan Police District), as defined in section 69 of the Local Government Finance Act 1992.....

(see Section 336 (1))

“Precepting Authority” means (a) a county council...a “local precepting authority” means ..... (c) a parish or community council; (d) the chairman of a parish meeting...

(see Section 39(2) Local Government Finance Act 1992)

Section 69 of the 1992 Act states that a “local precepting authority” has the meaning given by section 39(2) above.



## REFERENCES

### Legislation

The National Parks and Access to the Countryside Act 1949 (NPACA 49)  
 The Countryside Act 1968 (CA 68)  
 The Highways Act 1980 (HA 80)  
 The Wildlife and Countryside Act 1981 (WCA 81)  
 The Acquisition of Land Act 1981 (ALA 81)  
 The Town and Country Planning Act 1990 (TCPA 90)  
 The Rights of Way Act 1990 (RWA 90)  
 The Transport and Works Act 1992 (TWA 92)  
 The Countryside and Rights of Way Act 2000 (CROW 2000)  
 The Natural Environment and Rural Communities Act 2006 (NERC 2006)  
 The Growth and Infrastructure Act 2013

### Statutory Instruments (SIs)

1492/1992: The Town and Country Planning General Regulations 1992  
 9/1993: The Rail Crossing Extinguishment and Diversion Orders Regulations 1993  
 10/1993: The Town and Country Planning (Public Path Orders) Regulations 1993  
 11/1993: The Public Path Orders Regulations 1993  
 12/1993: The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993  
 407/1993: The Local Authorities (Recovery of Costs for Public Path Orders) Regulations  
 451/1995: The Rail Crossing Extinguishment and Diversion Orders, the Public Path Orders and the Definitive Maps and Statements (Amendment) Regulations 1995  
 1978/1996: The Local Authority (Charges for Overseas Assistance and Public Path Orders) Regulations 1996  
 1479/2003: The Highways, Crime Prevention etc. (Special Extinguishment and Special Diversion Orders) Regulations 2003 (applies to England only)  
 1172/2006: The Countryside and Rights of Way Act 2000 (Commencement No.11 and Savings) Order 2006  
 1176/2006: The Natural Environment and Rural Communities Act 2006 (Commencement No.1) Order 2006  
 1177/2006: The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006  
 1279/2006: The Countryside and Rights of Way Act 2000 (Commencement No.8 and Transitional Provisions) (Wales) Order 2006

2201/2013: The Town and Country Planning (Public Path Orders)(Amendment)(England) Regulations 2013

### **Department of the Environment Circulars**

- 17/90: Rights of Way Act 1990
- 18/90: Modifications to the Definitive Map: Wildlife and Countryside Act 1981
- 7/95: Public Rights of Way - Amendment Regulations and Advice on Public Path Orders
- 11/96: Recovery of Costs for Public Path and Rail Crossing Orders- Amendment Regulations

### **Welsh Office Circulars**

- 44/90 Rights of Way Act 1990
- 45/90 Modifications to the Definitive Map: Wildlife and Countryside Act 1981
- 5/93 Public Rights of Way
- 6/93 Recovery of Costs of Public Path and Rail Crossing Orders
- 47/96 Recovery of Costs for Public Path and Rail Crossing Orders- Amendment Regulations

### **Department for Environment, Food and Rural Affairs Circulars**

- 1/2002 Guidance for Local Highway Authorities: on crime prevention on public rights of way – designation of areas (applies to England only)
- 1/09 Rights of Way Circular: Guidance for Local Authorities (applies to England only)

### **Department of Transport**

- 1/1994 Transport and Works Act 1992 – bridge and tunnel orders under Section 48 – stopping up and diversion of footpaths and bridleways crossing railways and tramways