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SUPERSEDED DEFINITIVE MAP ACTS, REGULATIONS AND GUIDANCE

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ABBREVIATIONS

CA Countryside Act

ACTS

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THE COMMONS, OPEN SPACES AND
FOOTPATHS PRESERVATION SOCIETY

THE RIGHTS OF WAY ACT, 1932

(with special reference to the functions of Local Authorities thereunder)

ITS HISTORY AND MEANING

By Sir Lawrence Chubb

THE TEXT OF THE ACT WITH A COMMENTARY

By Humphrey Baker, MA, Barrister-at-Law

Reprinted with revisions from the Journal of the Society for October, 1932
First Revision - 1938

Annotations such as [2] indicate where pages start in the printed booklet

[1]

THE RIGHTS OF WAY ACT, 1932

ITS HISTORY AND MEANING

By Sir Lawrence Chubb

The following account, written before the Act came into operation, has been reprinted in its original form, since attention may still properly be called to the powers and duties of local authorities under the Act

In every year there are days which mark events of outstanding importance in the history of the Commons, Open Spaces and Footpaths Preservation Society. Thus July 19th is the anniversary of the day on which, in 1865, a small group of distinguished men held a meeting in the Temple and resolved to form the Society. May 6th is a reminder of the opening by Queen Victoria, in 1882, of Epping Forest, the largest and finest Metropolitan Common, which had been rescued only after an intense legal and Parliamentary struggle lasting 16 years, a struggle in which the Society had taken a prominent part. Other famous fights worthy of remembrance include those which resulted in the saving of Banstead Downs and Berkhamsted Common. These protracted law suits were decided in favour of the public on the 21st December, 1889, and the 14th January, 1870, respectively.

Another date of special significance is January 1st, 1926, the day on which that monumental piece of legislation, the Law of Property Act, began to operate, bestowing upon Commons a charter of protection gained for them by the Society's successful efforts and negotiations. An anniversary, too, which the older members of the Society will never forget is the 19th April, 1928, when there passed to his rest the last survivor of the Founders of the Society and its President, the late Lord Eversley, who was as interested in the preservation of footpaths as he had always been in the safeguarding of Commons as features of natural beauty, and even more as health-giving breathing spaces for the people.

All these and many more are landmarks in the Society's history. To them must now be added as a red-letter day, July 12th, 1932, the day on which the Royal Assent was given to the Society's Rights of Way Act; an event likely to prove as beneficial to the public and as far-reaching in its effect as any former achievement of the "People's Watchdog."

[2]

History of the Act

For 26 years members of the Society had been pressing the Rights of Way Bill upon the notice of Parliament; yet, although its principles met with the almost unanimous approval of lawyers on both sides of each House, until the Session of 1931-2 the Bill never received from the Government Whips that assistance without which the efforts of private members are of little avail.

The history of the Bill, which was originally drafted for the Society by that distinguished Parliamentary draughtsman, the late Lord Thring, may be gathered from the following chronological tables:—

- 1906. Introduced by Mr. J. M. Paulton, M.P. Second Reading secured without a division.
- 1907. Introduced by the Rt. Hon. J. Ramsay MacDonald, M.P. Second Reading secured without a division.
- 1908. Introduced by Sir R. Winfrey, M.P. Second Reading carried by 160 to 13 votes, and Committee Stage passed.
- 1909. Introduced by Sir Henry Cowan, M.P.
- 1910. Introduced by Mr. Higham, M.P.
- 1911. Introduced into the House of Lords by Lord Eversley and carried through all its Stages. Read a first time in the House of Commons.
- 1912. Introduced by Sir J. Hastings Duncan, M.P.
- 1913. Reintroduced into the House of Lords by Lord Eversley and carried through all its Stages after consideration by the Select Committee presided over by Lord Alverstone. Read a first time in the House of Commons.
- 1927. Introduced by Sir Henry Cowan, M.P.
- 1928. Introduced by Sir Henry Cowan, M.P. Second Reading carried. 1930. Introduced by Sir Ernest Simon, M.P. Second Reading carried.

1932. Introduced by Mr. Holford Knight, M.P. Passed the House of Commons. Introduced into the House of Lords by Lord Buckmaster. Royal Assent July 12th.

[3]

The Object of the Act

The object of the Rights of Way Act is to simplify the law relating to the proof or disproof of disputed Highways of all kinds and, as originally drafted, it merely proposed to apply the principles of the Prescription Act, 1832, to claims to such ways. It could not be expected, however, that any Bill would emerge in its original form from the ordeal of critical examination by no fewer than seven Parliamentary Committees; and by the insertion of provisos and new sub-clauses, some useful but others in the Society's view less desirable, the measure gradually became more complicated until it assumed its present final form.

The Precedent of the Prescription Act

The Prescription Act, 1832 (on which the Rights of Way Act is based) deals with the proof needed to establish claims to private easements, including Rights of Way. It fixes 20 years of unchallenged enjoyment of passage over a path as being sufficient in proof of a claim to a private right of way when that way passes over land belonging to an absolute freeholder, but requires proof of 40 years of uninterrupted user to set up a successful claim when the property is in the hands of a tenant for life or other limited owner. The fixing of definite periods during which an owner would have ample opportunity for preventing the growth of an adverse easement has in practice proved equitable and satisfactory and it was felt logically sound that a similarly intelligible rule should be made applicable to the proof of claims to public rights of way. Hitherto there has existed no simple rule on this point for the guidance of local authorities or landowners, and litigation with regard to disputed rights of way tended to become ever more complicated and expensive as well as more uncertain in its results. It was essential, for instance, to bring to Court the oldest men and women of the district, regardless of the fact that the ordeal of a long and trying examination might prove detrimental to their health. That will not be necessary in the future, because in normal circumstances the evidence need not go back further than about 20 or 40 years.

[4]

The Theory of Dedication

In order to appreciate the value of the Act and the significance of the alterations it has effected in the law of Highways, it is well to bear in mind how, in legal theory, highways are deemed to have come into existence.

The word "Highway" is not confined to public carriage roads; it also includes public footpaths and bridleways. In legal theory all of those highways must have originated by one of two methods. They must either have been created under statutory authority or have been dedicated by some owner of the land over which they pass.

The statutory creation of highways is by no means unusual. Many thousands of public ways, for example, have been set out under the provisions of Inclosure Acts and Awards. Others have arisen under the authority of Diversion Orders made by Magistrates and enrolled at Quarter Sessions. Town Planning Schemes, too, generally provide for the formation of public roads. Highways which originated under any form of statutory authority are seldom challenged, but they constitute only a small proportion of the public roads and paths in the country.

When the statutory creation of a highway is incapable of proof, the legal theory is that it has been dedicated by some owner of the freehold capable of burdening his estate with a perpetual easement of public passage.

It must, however, be frankly conceded that relatively few footpaths or bridleways have ever been deliberately or expressly granted by any definite act or deed on the part of a landowner. The actual origin of innumerable tracks is lost in antiquity; nevertheless, however absurd in some cases the explanation may be, they are deemed to have owed their origin to the convenient fiction of "dedication." For instance, it is as certain as anything can well be that the deeply worn tracks in the vicinity of early British settlements were in use as thoroughfares in pre-Roman days. This must be

true in the case of the scarred and sunken roads leading to prehistoric places of worship; yet in 1905 the Society failed to satisfy a Judge that the traditional means of access to Stonehenge, which had been uninterruptedly enjoyed throughout living memory, had ever been dedicated as highways!

[5]

It is safe to assume that most paths, especially in rural areas, came into existence to meet local convenience. Before the days of turnpikes most high roads were unrepaired and untended; they were often little better than morasses to be avoided as highways by the pedestrians. The villagers therefore trod out alternative tracks or made use of the short cuts of agricultural labourers. Gradually such tracks were taken to by a wider public without question, and their antiquity and utility are often testified to by references in the Court Rolls of a Manor or by the Tithe map or by even earlier maps and records. Nevertheless if any of these paths should be challenged, it is necessary to satisfy the Court that it was at some time “dedicated” as a public right of way. In order to do this the practice hitherto has been to prove public enjoyment for a sufficiently long period to justify the presumption that at some time some owner must be credited with having known of the public user and, by acquiescing in it, must have intended to dedicate a right of way. Public use does not *create* the public right of way; it is merely evidence of dedication.

Although this theory of inferring dedication from public user and other evidence has long been acted upon, there has hitherto been no statutory or other direction as to how many years of public passage over a path are necessary to raise the presumption of dedication. Judges have differed in their methods of deciding the point. In one case where the circumstances were of an unusual nature, the inference of dedication was drawn from only 18 months' public user, and in other reported cases, in view of exceptional evidence, judges have felt bound to hold in favour of a claim to a public path although the track in dispute has only been used for a few years.

On the other hand there have been fairly numerous instances in which a decision has gone against the public although the way in dispute has been freely used throughout living memory.

This difference in the method of dealing with footpath cases has arisen from the fact that most of the great estates in this country are strictly entailed or subject to family settlements.

The Effect of Family Settlements

It has already been indicated that a public right of way is [6] analogous to a perpetual easement of passage. Once such a right has come into existence it can be lawfully extinguished only by an Act of Parliament or under such statutory authority as a Magistrates' Order, or a Planning Scheme. For this reason, it has come to be recognised by judges that the only person able to dedicate a public right of way is an actual owner of the absolute freehold. Where land is strictly entailed, the owner in possession, the tenant for life, only possesses a temporary interest in the property and is consequently deemed incapable of granting a public right of way, save to a certain extent under the provisions of the Settled Lands Acts. A right to a *private* way over his estate may be gained under the Prescription Act on proof of 40 years' uninterrupted enjoyment; but up to the present time, no matter how long the way had been used by the public or how conclusive in other respects the evidence might be, judges have felt bound to decide against claims to *public* rights of way unless satisfied that such ways must have originated before the unbroken period of entail began.

This doctrine has caused great and inequitable hardship to the public, for by its application many paths have been closed which have been freely enjoyed throughout living memory. When no beginning of the public user can be shown to have taken place during the family settlement, some judges have been prepared to presume that dedication took place before the settlement commenced, if otherwise satisfied with the evidence. This course was followed by the Court in *Rex v. West Sussex County Council* (1921, 125 L.T. 407), where a path crossing the Arundel Estate of the Duke of Norfolk was held to be public even though the estate had been strictly entailed from 1628; and also in *A. G. (Billericay R.D.C.) v. Tasker* (92 J.P. 157), where the land crossed by the path had been in settlement from 1815 to 1928; as well as other cases. Other judges, on the contrary, have decided against the public, though the evidence, save for the family settlement, was overwhelmingly in favour of the right of way.

The family settlement difficulty has been disadvantageous alike to local authorities charged with the protection of public rights and to owners. Great uncertainty has prevailed, as it has been impossible to

say in advance what view a Court of law might take [7] of the legal points involved; moreover, the necessity of producing the earliest possible evidence, both oral and documentary, has greatly added to the expense of litigation. The main object of the Rights of Way Act is to surmount these very serious technical difficulties by assimilating the principles of the proof of public ways to those already in operation under the Prescription Act with regard to private ways.

The Main Object of the Act

As will be seen from the appended annotated copy of the Act, its main provisions will be found in Section 1. This provides, in Sub-section (1), that where any way upon or over any land belonging to an absolute owner has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way shall be deemed to have been dedicated as public if it is of such a character that the presumption of dedication can properly arise, and if insufficient evidence exists to show that the owner had no intention to dedicate. Where any way has been enjoyed in such circumstances for the full period of 40 years, then it is provided that the presumption of dedication shall arise conclusively, i.e. even if the property has been entailed.

What is the meaning of the words in the Sub-section, “not being of such a character that user thereof by the public could not give rise at common law to any presumption of dedication” ? (see *post*, p.12) Those words were inserted at the instance of the Freeholders Society during the Committee stage of the Bill in the House of Lords. Obviously there are innumerable physical tracks which are not public rights of way. Paths leading only to a private house; ways in a park occasionally thrown open by the goodwill of the owner; woodland rides; wandering tracks of a vague nature passing over open land with no definite *termini*; such ways cannot be public and no notices are necessary to prevent the presumption of dedication arising from user of them. A highway of any kind must have a definite origin and objective; in other words it must have a good “*terminus a quo*” and a good “*terminus ad quem*”. If it does not possess such *termini* public user could not give rise to the presumption of dedication.

[8]

Notices and Maps

Had the Rights of Way Act stopped at this point all would have been well; but, unfortunately, a Select Committee of the House of Lords in 1911 added a sub-clause providing that the presumption of dedication might be rebutted by the placing and maintenance of a notice inconsistent with dedication, in which event, in the absence of evidence of a contrary intention, the notice should be sufficient to prevent the creation of a public right of way. Up to the present notices have been important links in the chain of evidence; but if a notice has been consistently ignored or defied by the public it is doubtful how far it would have operated as a bar to dedication, more especially if the path were provided with stiles and unlocked gates. For the future, however, in the absence of proof of a contrary intention, a notice will be absolute evidence to prove that during the period of its display no public path has been gained through user alone.

During the passage of the measure through the Standing Committee of the House of Commons this year, an addition was made to the original provision with regard to notices in order to give to an owner, who finds those which he has erected torn down or defaced, power to protect himself by giving notice in writing to the County Council and also to the Council of the Borough or Urban or Rural District in which the way is situated.

A further Sub-section was added to the Bill in the House of Lords without any previous indication that it would be moved. This is Section 1 (4) of the Act, and it authorises any owner to deposit with the County and District or Borough Council concerned, after the 1st January, 1934, a 6 inch scale map and a statement indicating the public ways he admits. This may be followed at the expiration of six years by a written statement that in the interval the owner has, or has not, dedicated additional ways; and the map and statement, in the absence of evidence of proof of a contrary intention, will be sufficient evidence to rebut any presumption of dedication of any ways not included in them during the respective periods covered by them.

This new provision at first sight appears to be one-sided in its application. It gives an obvious advantage to the landowner and it does not provide for any publication of the deposit of the [9] map and statement. That is a matter for regret. But a local authority zealous for the protection of public rights is unlikely to accept any *ex parte* claim without satisfying itself that in fact all public rights of way which can fairly be claimed have been included. For that reason it may be hoped that gradually there will be built up a definite record of all public rights of way, a task which has long awaited accomplishment.

What Local Authorities Should Do

What then should County Councils and Borough and District Councils do, in view of this new and important addition to their duties and functions? They can and should take time by the forelock and set to work to prepare their own maps and schedules of public rights of way. The Society has more than once approached every highway authority in the country, urging them to mark on ordnance maps all public rights of way in their districts. It has suggested that the help of Parish Councils should be sought in order that the records should be as full and accurate as is possible, and has issued hints and instructions on the preparation of maps.

Now that County and District Councils are likely to be faced with the deposit of maps at an early date it is advisable that they should prepare the necessary data to check those maps as soon as they have been deposited. They might, for instance, urge all Parish Councils in their area forthwith to undertake the compilation of preliminary lists and maps, and they might seriously consider the practicability and desirability of inviting branches of the Society or local rambling clubs to co-operate in the matter.

Moreover it is important that when any map and statement has been deposited, public attention should be drawn to the fact, and that all interested persons should be afforded an opportunity of inspecting them. The provision, if wisely used in this manner, should become a potent factor in the protection of public rights. It may lead to proper agreements and to the friendly settlement of disputes; and it is safe to assume that a great demand will be made for the services of the Society in this connection.

Maps as Evidence

Section 3 of the Act bids fair to be of much use in connection [10] with rights of way disputes. It is often desired by one side or the other in a law suit to put in as evidence ancient maps, histories, guide books or other data containing information likely to be of service in proving or disproving a claim to a public right of way. Very strict rules, however, have hitherto applied to such evidence. Maps or records (such as Inclosure Awards) prepared under express statutory authority have always been admissible, and ever since the Stonehenge suit and the later decision in *Folkestone Corporation v. Brockman* (L.R. 1914, A.C. 338) Tithe maps and awards have been admissible as evidence of reputation. But the best early surveys and even Ordnance maps of the country have not been admissible as evidence for or against a claim to a public way. This rule of law was referred to in the Court of Appeal by Lord Justice Cozens Hardy, who in *A. G. v. Horner*, said: "Overborne by the weight of authority and contrary to my own individual opinion as to what would be reasonable and just, I feel bound to reject these maps." To meet this construction of the accepted rules of evidence Mr. Randolph Glen, the Society's Standing Counsel, framed a provision which appears as Section 3. It recites that any Court or other tribunal dealing with a right of way claim shall take into consideration "any map, plan or history of the locality or other relevant document that is tendered in evidence, and such weight shall be given thereto as the Court or tribunal consider justified by the circumstances."

This amendment of the law is likely to prove of real value.

General Conclusions

The Act as passed goes far beyond the Bill originally drafted by Lord Thring, and it cannot be denied that from the point of view of the Society some at least of the amendments have been undesirable. Nevertheless, in spite of all its provisos and safeguards inserted in the interests of owners of property, the Act should materially assist in the work of protecting public rights of way. It has substituted for a

system which often demanded the production of evidence which it was quite impossible to bring forward, intelligible and simple rules which all may understand. It has got rid once for all of the difficulties of proving rights of way passing over land subject to family settlements or other limited ownerships, [11] difficulties which have pressed with peculiar harshness and inequity upon the public; and it has opened the door to the friendly definition of footpaths and bridleways and to the adjustment of disputes by arbitration. For these reasons all members of the Commons, Open Spaces and Footpaths Preservation Society are entitled to reflect with pride upon the help they have given, by their support and influence, to bring about an amendment of the law for which the Society has been pressing for nearly 30 years and gain for the public the benefit of the perfectly fair rules which, under the Prescription Act, have applied to private property for exactly one hundred years.

It would be ungrateful not to recall the services of those who had much to do in Parliament with this success. The way was paved long ago by the present Prime Minister (Mr Ramsay MacDonald) and the other members who had on previous occasions piloted the Bill through the House of Commons, and in the House of Lords by the late Lord Eversley. This year (1932) the Bill was introduced into the Commons by Mr. Holford Knight, K.C., and it would be impossible to speak too highly of his persistence in pressing it. Sir Thomas Inskip, the Attorney General, not only supported the Bill in Committee, but did everything possible to advance its passage; so too did the Government Whips and Mr. Llewellyn Jones—an old legal friend of the Society—Sir Kenyon Vaughan Morgan, Sir Percy Hurd and the other members of the Parliamentary Amenities Group. In the House of Lords the Bill was piloted by Lord Buckmaster, a Vice-President of the Society, who had the support of the Lord Chancellor and of Lord Salisbury. Of Lord Buckmaster's skill in dealing with hostile amendments and in securing the withdrawal of several damaging provisions it would be impossible to speak too highly. The Society is deeply grateful to all these and the other members of each House of Parliament whose assistance was so freely given in response to its appeal. It is grateful, too, to the National Council of Rambling Clubs Federations for organising various important open air demonstrations in support of the Bill and also a Petition, signed by more than seven thousand ramblers, which was sent to the House of Lords in support of the measure.

The Law of Property Act has been referred to as the Charter of the Commons. The Rights of Way Act may, with the co-operation of local authorities, be made the Charter of the Footpaths; [12] and the Society is entitled to a sense of legitimate pride in the reflection that once more it has been privileged to bear to victory the banner of public rights.

THE TEXT OF THE ACT, WITH A COMMENTARY

By Humphrey Baker, M.A., Barrister-at-Law

The following notes have been revised to correspond with the situation since 1st January, 1934

1.—(1) Where a way, not being of such a character that user thereof by the public could not give rise at common law to any presumption of dedication, upon or over any land has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, such way shall be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate such way, or unless during such period of twenty years there was not at any time any person in possession of such land capable of dedicating such way.

This subsection and the next are the central provisions of the Act and enormously simplify the proof which is necessary to establish ways as being public highways. It must be emphasised, however, that they do not in any way alter the general law as to the manner in which public rights are deemed to have come into existence, and that it is as necessary as ever to establish intention of some owner of the land who was able to do so, to dedicate the way as public. The difference—and an important one—is in the duration of the public user of the way which suffices to establish such intention, if the circumstances in other respects are not inconsistent.

If, for example, a path has served only as a pleasure stroll and has no public place—such as a road or village—as its objective or “*terminus*” it has always been more difficult to establish its dedication as a

highway than if it were an obviously useful short cut from place to place. It was settled by the Ambleside case (*Moser v. Ambleside U.D.C.* (1925) 89 J.P. 118) that a path need not *necessarily* lead from one public place to another in order for its dedication to be established; but the nature of the *termini* and the purpose for which the path is used have always been an important element in deciding whether or not dedication must be presumed to have [13] occurred, and they continue to be so. The words in subsection (1) . . . “not being of such a character that user thereof by the public could not give rise at common law to any presumption of dedication” are intended to make it clear that if a way is of such a character that no amount of public user would ever, under the previous law, have given rise to the presumption that it must have been dedicated as a highway, the twenty years' user prescribed by the subsection will not do so in future.

If, however, the way is of a kind which can reasonably be presumed to have been dedicated as public, having regard to the circumstances as a whole, then it is now unnecessary to prove public use of it for more than twenty years past, provided that:—

- (a) The user has been “as of right.”
- (b) The user has been without interruption.
- (c) It is not proved on the owner's behalf that the intention to dedicate the way as public was not continuous during the twenty years.
- (d) There was at some time during the twenty years a person in possession of the land who was able to dedicate a public right of way over it.

As to these:—

- (a) This is merely a statement of the previous law. If the public use of a path has been only by permission, or by force, or by stealth, it gives no reason for supposing that the owner intended the public to have a legal right to use it; and such use alone will not avail, whether continued for twenty years or any other period.
- (b) Occasional closing of a path has always been recognised as a means by which the owner of land can make it clear that though he has no objection to the public using a path by courtesy, he does not intend to grant them a legal right to do so; and this continues to be the case under the Act. The public use must have been free from interruption (that is to say, interruption by or with the authority of the owner) during the twenty years; but whereas formerly it was often necessary to prove much more than twenty years' uninterrupted use, under the Act this is all that is required, where the other conditions of the sub-sect. are complied with.

[14]

Freedom from interruption does not mean that the public use of the way must have been continuous throughout the period, but that the *enjoyment* of the right must not have been interrupted. See *Merstham Manor Ltd. v. Coulsdon and Purley U.D.C.* (1937 2 K.B. 77); *Jones v. Bates* (1938, 2 All England Reports, 237), judgment of Scott, L.J.

- (c) The burden of proof of intention *not* to dedicate is on the owner. If he cannot prove any action on his part during the twenty years, inconsistent with an intention to dedicate, dedication will be presumed.
- (d) If during the twenty years there was *never* any one in possession of the land capable of dedicating a public right of way over it, twenty years' user will not suffice, and the case will fall within sub-section (2). Examples of persons not themselves capable of dedicating are, tenants for life under family settlements, the owners of glebe land, and infants or lunatics.

Provided that the above conditions are complied with, all that is now necessary, if a public right of way is challenged, is to prove uninterrupted public use for twenty years, instead of, as now, having to collect all possible evidence as far back as living memory extends and even before that time.

(2) Where any such way has been enjoyed as aforesaid for a full period. of forty years, such way shall be deemed conclusively to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate such way.

This sub-section deals with the case described in paragraph (d) above, where there has *not* at any time during the past twenty years been any person in possession of the land who could dedicate a highway

over it. In such circumstances it has often in the past been quite impossible to establish any public right of way at all, even though the path could be proved to have been in use for hundreds of years. The successive tenants for life, for instance, of land in family settlement, may have been quite willing to give the public legal rights of way over it, but they have had no power to do so; [15] and even if it could be proved that the path had been used throughout living memory, some judges would not accept this as evidence of dedication unless there was positive evidence of use before the settlement began, which might be unobtainable. In such cases, and in others where incapacity to dedicate has existed for more than twenty years before the date when the right of way is claimed, if *forty years'* user can be proved, it is (subject to the qualifications imposed by section 1 (7) of the Act, see *post*, p. 21) no longer open to the person in possession to object that there was no one in possession at any time during that period who could dedicate, for the forty years' use is now conclusive evidence that dedication took place at some date in the past when the land was held by someone who could make it.

Where forty years' user by the public can be established, the burden of proving that throughout this period there has been no intention to dedicate rests on the person in possession.

(3) A notice by the owner of the land over which any such way passes inconsistent with the dedication of the way as a highway, placed before or after and maintained after the commencement of this Act in such a manner as to be visible to those using the way, shall, in the absence of proof of a contrary intention, be sufficient evidence to negative the intention to dedicate such way as a highway, and where a notice has been placed in the manner provided in this sub-section and is subsequently torn down or defaced, notice in writing by the owner of the land to the council of the county and of the borough or urban or rural district council in which the way is situate that the way is not dedicated to the public shall, in the absence of proof of a contrary intention, be sufficient evidence to negative the intention of the owner of the land to dedicate such way as a highway.

The first part of this sub-section does not differ in principle from the previous law. Dedication has always been a matter of intention, and the exhibition of notices has always been regarded as evidence of intention. Where an owner declares by means of a notice that he does not intend to dedicate, it cannot reasonably be asserted, in the absence of other contrary evidence sufficient to outweigh the evidence of the notice, that he does so intend. A [16] notice under this sub-section, however, only relates to the intention of the owner responsible for exhibiting it, and during the time when it is exhibited; and if dedication can be proved to have occurred before the notice was displayed, the notice will have no legal effect. Moreover, it is not in itself conclusive, seeing that the words "in the absence of proof of a contrary intention" imply the possibility of proving other acts of the owner inconsistent with the notices, from which it might in the particular case be established that he did intend to dedicate the way as a highway.

The second part of the sub-section is intended to meet the case where notices are wilfully destroyed or obliterated by members of the public. In such a case, notice to the local authority is in have the same effect; but as in the case of the notice exhibited on the land, it will only relate to the intentions of the person giving it and will not bind former or subsequent owners, nor even the present owner if he afterwards acts in a manner inconsistent with it.

It should be observed that if the owner of the land does not maintain the notice in such a manner as to be visible, i.e., legible, to those using the way, it will have no effect. (See also sub-section (5) as to the placing of notices by the owner on land let to a tenant.)

With regard to the wording of the notices, indication that the owner does not intend to dedicate a way as a highway is not in the least inconsistent with its *permissive* use by the public. The wording of the notice will naturally vary according to the circumstances, but the following variations may be suggested:—

- (a) Where it is desired to exclude the public entirely:— "Private Road (or Path.) No 'Thoroughfare" or, "No Public Right of Way." A notice "Private Road," and nothing more, displayed in connection with an accommodation road over which the public claims a right of footway or bridleway, will be insufficient in itself to bar that claim.

The statement "Trespassers will be Prosecuted" is untrue in law and unnecessarily provocative, and its use is to be deprecated.

- (b) Where it is desired to prevent the way from becoming public, but the owner is willing to allow the public to use it until further notice:—

[17]

For a road for vehicles:—

“This is a Private Road, but the Public are permitted to use it until further notice.”

For a bridleway or footpath:—

“This Way is Private, but (Horsemen and) Pedestrians are permitted to use it until further notice.”

Requests as to litter, keeping dogs under control, etc., can be added as required.

It should be observed, however, that the object of preventing the creation of a public right can be achieved in various manners without the display of notices at all, as for example by closing gates on the way periodically, and it is unlikely that owners of land will wish to incur unnecessary expense in erecting notices when the same result can be secured without them. Moreover there are many paths, particularly on large private estates, the existence of which is entirely explained by estate requirements and the use of which by the public would never be held by the Court to raise a presumption of dedication; and in such cases notices will not be necessary.

Where notices are placed, their effect will not, as explained above, be retrospective, and they will only indicate the intention of the owner as from the date of their erection, and during the time when they are displayed.

- (4) (a) The owner of any land shall be at liberty to deposit at any time after the commencement of this Act with the council of the county and with the council of the borough, urban district or rural district in which the said land is situate :**
- (i) a map on a scale of not less than six inches to one mile on which such land shall be delineated; and**
- (ii) a statement indicating what ways he admits have been dedicated as highways.**
- (b) In any case in which a deposit under paragraph (a) of this sub-section has been made, statutory declarations made by the owner aforesaid or by his successors in title and lodged by him or them with the councils aforesaid at any time prior to the expiration of six years from the date of such deposit or prior to the expiration of six years from the date on which any previous declarations were lodged under this paragraph to the effect that no additional ways (other than any specifically [18] indicated in such declaration) over the lands delineated on the said map have been dedicated to the public since the date of such deposit or since the date of the lodgment of such previous declarations (as the case may be) shall in the absence of proof of a contrary intention be sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional ways as highways.**

This sub-section was inserted as an amendment in the Act during its progress through Parliament. Its general meaning is clear, but attention should be drawn to certain points.

In the first place, the map and statement will include only ways which the owner admits have been dedicated as highways, and they will not therefore necessarily include *all* ways which have been so dedicated. Owners will no doubt include all those as to the public nature of which there can be little or no question, but there will inevitably be border line cases, and owners cannot be expected to make a present of disputed paths to the public. At the same time, the maps and statements, if not challenged, will undoubtedly in the future become the principal evidence as to which ways have been dedicated and which have not; and it is therefore extremely important that the documents should be most carefully scrutinised, both by the local authorities with whom they are deposited and by local Footpath Preservation Societies and similar bodies. In this connection it should be observed that voluntary societies *as such* have no legal *right* to inspect these documents in the hands of local authorities, though their representatives have such a right as members of the public. Section 280 of the Local Government Act, 1933, provides that:—

- “(1) In any case in which a map, plan or other document of any description is deposited with the clerk of a local authority, or with the chairman of a parish council or parish meeting, pursuant to the standing orders of either House of Parliament or to any enactment (including any enactment in this Act) or statutory order, the clerk or chairman, as the case may be, shall receive and retain the

document in the manner and for the purposes directed by the standing orders or enactment or statutory order, and [19] shall make such memorials and endorsements on, and give such acknowledgments and receipts in respect of, the document, as may be so directed.

- “(2) Subject to any provisions to the contrary in any other enactment or statutory order, a person interested in any such map, plan or other document deposited as aforesaid may, at all reasonable hours, inspect and make copies thereof or extracts therefrom on payment to the person having custody thereof of the sum of one shilling for every such inspection, and of the further sum of one shilling for every hour during which such inspection continues after the first hour.
- “(3) If a person having the custody of any map, plan or other document as aforesaid obstructs any person in inspecting the documents or making a copy thereof or extract therefrom, he shall be liable, on summary conviction, to a fine not exceeding five pounds.”

Unless the authority has material with which to compare the maps and statements it may expect to receive, it is unlikely to be able to deal promptly or satisfactorily with them, and it is therefore advisable that the councils concerned should be in possession of the necessary data to enable owners' maps and statements to be checked as soon as they are submitted. The best method, which has already been adopted by a number of authorities, is for County and District Councils at once to arrange for the preparation of maps and schedules of reputed public ways in their areas. Parish Councils should be asked to assist in the work and to prepare footpath maps and lists showing all the reputed public ways within their respective parishes, and in districts where a Footpaths Preservation Society or Ramblers' Federation exists, it might usefully be asked to co-operate. The ways which, as the result of the survey, are considered to be public should be recorded in lists and marked on 6 in. Ordnance sheets, and the existence of the lists and maps should be made publicly known and all interested persons should be given reasonable opportunities of inspecting them. A suggested form or advertisement for insertion in the local newspaper is given as an appendix to this pamphlet, and hints and instructions on the preparation of footpath maps may [20] be obtained on application from the Commons, Open Spaces and Footpaths Preservation Society.

Where such a survey has not been made, it is suggested that in rural districts the County or District Council should notify the Parish Council of the deposit by an owner of a map and statement under the Act and that the views of the Parish Council should be ascertained before any intimation is given that the map is accepted as an accurate record.

When these surveys have been made, or the views of the Parish Council obtained, the Local Authority should compare them with the lists and maps deposited by the owners, and where discrepancies are disclosed every endeavour should be made by the local authority to reach a decision by weighing carefully the evidence for and against the existence of any particular right of way. The Society has been able to assist local authorities in a large number of cases by impartial investigation and advice and has enabled acceptable decisions to be reached without recourse to litigation with its uncertainty and expense. In cases where agreement with the landowners cannot be reached and litigation has had to be resorted to by the local authorities, it has been held that, even although no public right of way has been established by the evidence, the local authority were justified in taking proceedings since there was some reasonable foundation for asserting the public claim.

(5) In the case of land in the possession of a tenant for a term of years or from year to year let on lease, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of any such tenancy, have the right to place and maintain such notice as aforesaid, but so that no injury is done thereby to the business or occupation of the tenant.

This sub-section enables the landlord, where land is let on lease, to enter and place and maintain the notices referred to in sub-section (3), without reference to the tenant. It is legally possible for a landlord to be held to have dedicated a public right of way, even though the land over which the way runs has never during the period of public user been in his own occupation but always in that of the tenant; and it is therefore equitable that he should have the right of protecting himself which the Act confers on owners generally.

(6) Each of the respective periods of years mentioned in this section shall be deemed and taken to be the period next before the time when the right of the public to use a way shall have been brought into question by notice as aforesaid or otherwise.

This sub-section differs from the corresponding provision in the Prescription Act, 1832, which required the periods of twenty and forty years to be “next before some suit or action” in which the right was questioned. In the present case, if a way is questioned by the erection of a “Private” notice, or by actual obstruction, or by turning back members of the public or otherwise, and action is taken subsequently, but not at once, to assert the public claim, the twenty or forty years' use which will need to be proved will be those up to the time of the obstruction, etc. *not* up to the time of the action. In *South Eastern Railway Co. v. Warr* (21 L.G.R. 669), for example, a way was held to be public, though a gate on it had been kept locked more or less continuously for nearly 30 years up to the date of the proceedings, on evidence of public user before the locking began which was sufficient to establish dedication before that time. The periods of 20 and 40 years will apply to a case such as this. Nor does it matter if the notice was first displayed or the obstruction made, before the Act came into force, provided that there is proof of public user for the requisite period before that time.

(7) Nothing in this section contained shall affect any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate any such way where such way would be incompatible with such public or statutory purposes.

This sub-section appears to be already covered by the words in sub-section (1) as to persons incapable of dedicating, but it makes the position explicit. There is no *general* incapacity in corporations, etc., to dedicate highways (see, for example, *S. E. Railway Co. v. Warr* (*supra*) and *Grand Junction Canal Co. v. Petty* (1888), 21 Q.B.D., 273), but they cannot do so if dedication would be incompatible with the purposes for which they exist. This was the law before the Act, and it remains unaltered.

(8) For the purposes of this section the expression “land” includes land covered with water.
[22]

A non-tidal navigable water, whether a lake or river, may be a highway, and the Act applies to such waters in the same manner as to ways on land. All tidal navigable waters are highways at common law, and the Act has no application to them.

2.—(1) Nothing in this Act shall affect any proceedings pending at the commencement of this Act, and -where in respect of any way a court of competent jurisdiction decides in proceedings so pending, or has before the commencement of this Act decided, that the way is not a highway, this Act shall not apply except as respects enjoyment of the way after the date of the decision.

This is a transitional provision, to prevent possible conflict between the old and the new law in individual cases already decided, or in course of being decided, when the Act comes into force.

(2) Nothing in this Act shall operate to prevent the dedication of a way as a highway being presumed on proof of user for any less period than twenty years or to prevent the dedication of a way as a highway being presumed or proved under any circumstances under which it can be presumed or proved at the time of the passing of this Act.

This makes it clear that the Act provides an *additional* method of establishing the dedication of highways and does not abolish former methods. Where for any reason it does not apply, or is unnecessary, the existing law can be utilised in exactly the same way as before. Thus, if evidence of public use for, say, five years, is enough in the circumstances of the particular case to establish the owner's intention to dedicate, there is no need to prove use for twenty.

In many instances it will no doubt be advisable to plead alternatively both under the present Act and under the common law, as in the analogous case of private easements.

3.—Any court or other tribunal shall, before determining (a) whether a way upon or over any land has or has not been dedicated as a highway, or (b) the date upon which such dedication, if any, took place, take into consideration any map, plan or history of the locality or other relevant document that is tendered in evidence, and such weight shall be given thereto as the court or tribunal consider justified by the circumstances, including the antiquity of the tendered document, the status [23] of the person or persons by whom it was made or compiled, its purpose, and the custody in which it has been kept and from which it is produced.

This very valuable provision makes much evidence admissible that has not strictly been so hitherto, and also removes much uncertainty. Hitherto maps not prepared in the exercise of some statutory duty, such as maps attached to Inclosure or Tithes Awards, or the deposited plans of railway companies, have not been admissible unless the actual maker of the map could be produced or its authenticity sufficiently established, which, in the case of the maps of greatest value as evidence of the antiquity of a way, is seldom possible. On the other hand, the Court has sometimes taken notice of such maps, and it has therefore been advisable, when preparing a case, to collect all possible evidence in the shape of maps and other documents, only to find it in most cases ruled out as inadmissible. The new enactment removes the existing uncertainty as to what is admissible and what is not, and will in many cases enable the true facts to be far more accurately determined.

4.—The person entitled to the remainder or reversion immediately expectant upon the determination of a tenancy for life or pour autre vie in land shall have the like remedies by action for trespass or an injunction to prevent the acquisition by the public of a right of way over such land as if he were in possession thereof.

A tenant of land for life (his own life or another's) cannot dedicate a highway over that land; but under the Act such highways may come into existence in consequence of 40 years' uninterrupted user, and he may not, as being merely a limited owner, think it worth while to take the measures prescribed by the Act, such as the erection of notices, to prevent the public right from maturing. This would adversely affect the remainder-man or reversioner entitled to the property on the expiration of the life tenancy, who might find public rights of way come into existence which he had had no power to prevent, even though all along he had an interest in the land. The present Section therefore gives the person entitled to the land on the expiration of a life tenancy the right to prevent public use of a way which has not become dedicated as a highway, and which he does not intend to dedicate.

5.—This Act shall not apply to Scotland or Northern Ireland.

6.—This Act shall come into operation on the first day of January, nineteen hundred and thirty-four.

The date fixed in the Bill as introduced was the 1st January, 1933, but it was postponed for a year by Parliament in order to give owners of land time to survey the situation and prepare the necessary maps, lists, etc. Now that the Act is in force, the periods of twenty and forty years do not have to be reckoned from the 1st January, 1934, but any way which has been used uninterruptedly and as of right for a period of twenty or forty years, as the case may be, can be claimed as public, whenever the period occurred, subject to the provisions of the Act which have been set out and explained in the preceding pages.

7.—This Act may be cited as the Rights of Way Act, 1932.

Rights of Way Act 1932

Other pamphlets published by the Society:—

Footpath Maps and Surveys	... 3d.
Parish Councils and the Rights of Way Act	... 2d.
The Dedication of Highways	... 6d.
The Maintenance of Public Ways	... 6d.
The Ploughing of Public Ways	... 1d.
The Closing or Diversion of Public Ways	... 2d.
Barbed Wire Nuisances	... 1d.
Roadside Wastes)
Rights of Way Proceedings in the County Court) 6d.*
Our Commons and Footpaths	... 1d.
Commons—What they are and how they are Protected	... 6d.
Open Spaces—Their Protection and Control	... 6d.

* One pamphlet

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949 c. 97

27. Surveys of public paths, etc., and preparation of draft maps and statements

- (1) Subject to the provisions of this Part of this Act, the council of every county in England or Wales shall, as soon as may be after the date of the commencement of this Act, carry out a survey of all lands in their area over which a right of way to which this Part of this Act applies is alleged to subsist, and shall, not later than the expiration of three years after that date or of such extended period as the Minister may in any particular case allow, prepare a draft map of their area, showing thereon a footpath or a bridleway, as may appear to the council to be appropriate, wherever in their opinion such a right of way subsisted, or is reasonably alleged to have subsisted, at the relevant date.
- (2) A map prepared in accordance with the last foregoing subsection shall also show thereon any way which, in the opinion of the authority carrying out the survey (hereinafter referred to as "the surveying authority") was at the relevant date, or was at that date reasonably alleged to be, a road used as a public path.
- (3) For the purposes of this section, the relevant date shall, in relation to the preparation of a draft map, be such date, not being earlier than six months before the date on which notice of the preparation of the draft map is published in accordance with the following provisions of this Part of this Act, as the surveying authority may determine.
- (4) An authority by whom a draft map is prepared as aforesaid shall annex thereto a statement specifying the relevant date and containing, as respects any public path or other way shown thereon in accordance with the foregoing provisions of this section, 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.
- (5) Any duty imposed by this section to prepare a map relating to any area may be discharged by the preparation, whether at the same time or at different times, of two or more maps, each comprising part of the area but together comprising the whole thereof; and where two or more such maps are prepared all proceedings under the following provisions of this Part of this Act may, except as hereinafter expressly provided, be taken separately in relation to each map.
- (6) In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:
 - "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;
 - "horse" includes pony, ass and mule, and "horseback" shall be construed accordingly;
 - "public path" means a highway being either a footpath or a bridleway;
 - "right of way to which this Part of this Act applies" means a right of way such that the land over which the right subsists is a public path;
 - "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.
- (7) A highway at the side of a river, canal or other inland navigation shall not be excluded from any definition contained in the last foregoing subsection by reason only that the public have a right to use the highway for purposes of navigation, if the highway would fall within that definition if the public had no such right thereover.

28. Provision of information by other local authorities

- (1) Before carrying out a survey under the last foregoing section the surveying authority shall consult with the councils of county districts and parishes in the area of the authority as to the arrangements to be made for the provision by such councils of information for the purposes of the survey.
- (2) Where the surveying authority and any such council as aforesaid are unable to agree as to the said arrangements, they shall refer the matter to the Minister and he shall determine what arrangements are to be made.

- (3) Any arrangements made under this section for the provision of information by a parish council shall require the council to cause a parish meeting to be held for the purpose of considering the information to be provided by the council; and any arrangements so made for the provision of information by the council of a district shall, as respects each parish in the district not having a parish council, require the chairman of the parish meeting or any person representing the parish on the district council to cause a parish meeting to be held for the purpose of considering the information to be provided by the district council in relation to the parish.
- (4) It shall be the duty of any such council as aforesaid to collect and furnish to the surveying authority such information, in such manner and at such time, as may be provided for by arrangements agreed or determined under this section; and the said duty shall be enforceable by mandamus on the application of the surveying authority.

Note: Subs (3) ceased to apply in Wales from 1 April 1974 – Local Government Act 1972 Sch 17 para 32.

29. Representations and objections as to draft maps and statements

- (1) On completing the preparation of a draft map and statement the surveying authority shall notify the Minister and shall cause notice of preparation thereof, and of places where copies thereof may be inspected at all reasonable hours, and of the time (not being less than four months) within which, and the manner in which, representations or objections with respect to the draft map and statement may be made to the authority, to be published in the London Gazette and in one or more local newspapers circulating in the area of the authority.
- (2) At any time after the publication of a notice under the last foregoing subsection and before the expiration of the period specified in the notice for the making of representations and objections, the owner of any land to which the draft map and statement relate, or any other person interested in such land, may require the surveying authority to inform him what documents (if any) creating or modifying any of the rights of way shown on the draft map, being rights of way required to be shown thereon, were taken into account in preparing the draft map, so far as the said land is concerned, and—
 - (a) as respects any such documents in the possession of the surveying authority, to permit him to inspect them and take copies thereof,
 - (b) as respects any such documents not in their possession, to give him any information the authority have as to where the documents can be inspected;and on any requirement being made under this subsection the surveying authority shall comply therewith within fourteen days of the making of the requirement:

Provided that nothing in this subsection shall be construed as limiting the documentary or other evidence which may be adduced in any proceedings under this Part of this Act in support of the existence of a right of way.
- (3) If any representation or objection is duly made to the surveying authority as to anything contained in or omitted from the draft map and statement, the authority, after considering the representation or objection and affording to the person by whom it was made an opportunity of being heard by a person appointed by the authority for the purpose, shall determine what (if any) modification of the particulars contained in the draft map and statement appears to the authority to be requisite in consequence thereof, and shall serve notice of their determination on the person by whom the representation or objection was made.
- (4) Where under the last foregoing subsection the surveying authority determine to modify the particulars contained in the draft map and statement by the deletion of a way shown as a public path, or as a road used as a public path, or by the addition of a way so that it will be so shown, —
 - (a) they shall cause notice of their determination, in such form as may be prescribed by regulations made by the Minister, to be published in the London Gazette and in one or more local newspapers circulating in the area of the authority, specifying the time (not being less than twenty-eight days) within which, and the manner in which, representations or objections with respect to the determination may be made to the authority, and
 - (b) if any representation or objection is duly made to the authority under the last foregoing paragraph, the authority shall notify the effect of the representation to the person (hereinafter referred to as “the original objector”) who made the representation or objection under subsection (3) of this section and, after considering the representation or objection under the last foregoing paragraph and affording to the person by whom it was made and to the original objector an opportunity of being heard by a person appointed by the authority for the purpose, shall decide whether to maintain or revoke the determination and serve notice of their decision on the person by whom the representation or objection under the last foregoing paragraph was made and on the original objector.

- (5) Any person aggrieved—
- (a) by a determination of the surveying authority under subsection (3) of this section not to give effect to a representation or objection as to anything omitted from the draft map and statement (other than a limitation or condition to which a right of way is alleged to be subject), or
 - (b) by a decision of the surveying authority under the last foregoing subsection to maintain a determination to modify the particulars contained in the draft map and statement by the deletion of a way shown as a public path or as a road used as a public path, or
 - (c) by a decision of the surveying authority under the last foregoing subsection to revoke a determination to modify the said particulars by the addition of a way so that it will be so shown,
- may, at any time within twenty-eight days after the service upon him of notice of the determination or decision, serve notice of appeal against that determination or decision on the Minister and on the surveying authority.
- (6) Where notice of appeal is duly served under the last foregoing subsection the Minister, after giving to the appellant and to the surveying authority an opportunity of being heard by a person appointed by him for the purpose, shall either dismiss the appeal or direct the authority, in preparing the provisional map and statement in accordance with the provisions of the next following section, —
- (a) in the case of an appeal against a determination under subsection (3) of this section, to modify the particulars contained in the draft map and statement in such manner as may be specified in the direction;
 - (b) in the case of an appeal against a decision under subsection (4) of this section, to reverse the decision.
- (7) Where a notice of appeal duly served under subsection (5) of this section relates to a decision of the surveying authority under subsection (4) of this section, the authority shall serve a copy of the notice on the original objector, and the Minister shall give to the original objector an opportunity of being heard under the last foregoing subsection at the same time as the appellant.

Note: After the 1968 Act came into force, the Minister had to give an opportunity of being heard under subsection (6) any person appearing to him to have an interest – CA 1968 Sch 3 Pt I

Subsection (6)(b) amended by CA 1968 Sch 3 Pt I to read “vary or reverse” the decision.

30. Preparation of provisional maps and statements

- (1) As soon as may be after the expiration of the period of twenty-eight days next following the date on which the notice of the determination made or decision taken on all representations and objections made under the last foregoing section as respects a draft map and statement has been served on the persons by whom the representations or objections were made, or, if no such representations or objections have been duly made, then as soon as may be after the time for making such representations or objections has expired, the surveying authority shall prepare a provisional map and statement, and shall cause notice of the preparation thereof, and of places where copies thereof may be inspected at all reasonable hours, to be published in the London Gazette and in one or more local newspapers circulating in the area of the authority.
- (2) If, apart from this subsection, the period mentioned in the last foregoing subsection would expire before the determination of an appeal of which notice has been duly served under the last foregoing section, the said period shall be extended until the appeal is determined.
- (3) The particulars to be contained in a provisional map and statement shall be those contained in the draft map and statement, subject to such modifications thereof (if any) as may be specified in any direction given by the Minister under paragraph (a) of subsection (6) of the last foregoing section or as may appear to the surveying authority to be requisite having regard to their determination of any representation or objection made under that section, being a determination as to which the Minister has not given any direction as aforesaid.
- (4) Every provisional statement prepared under this section shall include a note of the relevant date specified in the corresponding draft statement.

Note: The particulars to be contained in a provisional map and statement had to reflect any variation of a decision under section 29(4), following the amendment made to section 29(6) by CA 1968 Sch 3 Pt I.

- 31. Determination by the quarter sessions of disputes as to provisional maps and statements**
- (1) At any time within twenty-eight days after the publication of a notice under subsection (1) of the last foregoing section, the owner, lessee or occupier of any land shown on the map to which the notice relates, being land on which the map shows a public path, or a road used as a public path, may apply to quarter sessions for a declaration—
- (a) that at the relevant date mentioned in the provisional statement there was no public right of way over the land;
 - (b) that the rights conferred on the public at that date by the public right of way over the land were such rights as may be specified in the application, and not such rights as are indicated in the provisional map and statement;
 - (c) that the position or width of that part of the land over which the public right of way subsisted at the said date was as specified in the application, and not as indicated in the provisional map and statement; or
 - (d) that the public right of way over the land at the said date was not unconditional but was subject to limitations or conditions specified in the application, or, if the said right is indicated in the provisional statement as being subject to limitations or conditions, that the said right was subject to other limitations or conditions specified in the application either in addition to or in substitution for those indicated in the provisional statement.
- (2) Provision may be made by or under regulations made by the Secretary of State—
- (a) for prescribing the court of quarter sessions to which applications under this section are to be made or for requiring such applications to be made to a committee, being either an existing committee or a committee specially constituted for the purpose as may be prescribed by the regulations, of such court of quarter sessions as may be so prescribed;
 - (b) for the form and manner in which such applications are to be made, and the persons who are entitled to be parties to the hearing of any such application;
 - (c) as to the publication or service of notice of proposals to make such applications;
 - (d) for the awarding of costs in any proceedings under this section.
- (3) If on the hearing of an application under subsection (1) of this section, being an application for a declaration under paragraph (a), (b) or (c) of that subsection, it is not proved to the satisfaction of the court or committee—
- (a) in the case of an application under the said paragraph (a), that there was at the relevant date a public right of way over the land;
 - (b) in the case of an application under the said paragraph (b), that the rights conferred on the public by the public right of way over the land at the said date were rights other than those specified in the application, or
 - (c) in the case of an application under the said paragraph (c), that the position or width of the part of the land therein mentioned was other than that specified in the application;
- the court or committee shall make the declaration sought by the applicant.
- (4) Where the court or committee make a declaration in the case of an application under the said paragraph (a) and it is proved to their satisfaction:
- (a) that there was at the relevant date a right of way to which this Part of this Act applies over land other than that to which the application relates, and
 - (b) that the said right is the right of way which the surveying authority had in view when they showed on the map the disputed public path or road used as a public path;
- the court or committee may, if satisfied that every owner, lessee and occupier of any of the land mentioned in paragraph (a) of this subsection has had an opportunity of appearing before them, make a further declaration that a public right of way as specified in the declaration subsisted over that land at that date
- (5) Where, in the case of an application under paragraph (b) or paragraph (c) of subsection (1) of this section, the court or committee do not make the declaration sought by the applicant, but the true nature of the rights conferred on the public by the public right of way in question or, as the case may be, the true position or width of the part of the land over which the public right of way subsisted at the relevant date (being different both from that specified in the application and from that indicated in the provisional map and statement) is proved to the satisfaction of the court or committee, the court or committee may make a declaration accordingly:

Provided that the court or committee shall not make a declaration under this subsection unless they are satisfied that every owner, lessee and occupier of any land which would be affected by the declaration has had an opportunity of appearing before them.

- (6) A declaration under paragraph (d) of subsection (1) of this section shall not be made unless the matters to be stated in the declaration have been proved to the satisfaction of the court or committee hearing the application.
- (7) Section twenty of the Criminal Justice Act, 1925, (which provides for appeals to the High Court by way of case stated on a point of law) shall with the necessary modifications apply in relation to applications under this section.
- (8) Subject to the last foregoing subsection and to the next following section, a declaration made under this section shall be conclusive evidence of the matters stated in the declaration.

Amended by the Courts Act 1971 Sch 11 by the repeal of the following : in subsection (2), paragraphs (a) and (d), in subsection (3), (4), (5) and (6), the words "or committee", wherever they occur, and subsection (7).

32. Preparation, publication and effect of definitive maps and statements

- (1) As soon as may be after the determination of all applications made under the last foregoing section as respects any map and statement, or if no such applications have been duly made then as soon as may be after the time for making such applications has expired, the surveying authority shall prepare a definitive map and statement, and shall cause notice of the preparation thereof, and of places where copies thereof may be inspected at all reasonable hours, to be published in the London Gazette and in one or more local newspapers circulating in the area of the authority.
- (2) The particulars to be contained in a definitive map and statement shall be those contained in the provisional map and statement, subject to such modifications (if any) as may be requisite for giving effect to any declaration made under the last foregoing section; and every definitive statement shall include a note of the relevant date specified in the corresponding provisional statement.
- (3) The authority by whom a definitive map and statement are prepared shall furnish to the Minister such number of copies thereof as he may require.
- (4) A definitive map and statement prepared under subsection (1) of this section shall be conclusive as to the particulars contained therein in accordance with the foregoing provisions of this section to the following extent, that is to say:
 - (a) where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date specified in the statement a footpath as shown on the map;
 - (b) where the map shows a bridleway, or a road used as a public path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid; and
 - (c) where by virtue of the foregoing paragraphs of this subsection the map is conclusive evidence, as at any date, as to a public path, or road used as a public path, shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at the relevant date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date and the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date.
- (5) A document purporting to be certified on behalf of the surveying authority to be a copy of the definitive map or statement or of any part thereof shall be receivable in evidence and shall be deemed, unless the contrary is shown, to be such a copy.
- (6) The provisions in that behalf of Part III of the First Schedule to this Act shall have effect as to the validity of definitive maps and statements prepared under subsection (1) of this section.

33. Periodical revision of maps and statements

- (1) The authority by whom a definitive map and statement have been prepared under the last foregoing section shall from time to time review the particulars contained therein having regard to events which have occurred at any time between the relevant date specified in the definitive statement and such date as may be determined by the authority for the purposes of the review (in this and the next following section referred to as "the date of review"):

Provided that in the case of a map and statement which have previously been reviewed under this subsection, the foregoing provisions of this subsection shall have effect with the substitution, for the reference to the relevant date specified in the statement, of a reference to the last preceding date of review.

- (2) The events so occurring as aforesaid to which an authority shall have regard in carrying out a review under the last foregoing subsection shall include the following events, that is to say—
- (a) the coming into operation of any enactment or instrument, or any other event, whereby a highway required to be shown, and shown, on the map has been authorised to be stopped up, diverted, widened or extended;
 - (b) the coming into operation of any enactment or instrument, or any other event, whereby a highway shown on the map as being a highway of a particular description required to be shown thereon has ceased to be a highway of that description;
 - (c) the coming into operation of any enactment or instrument, or any other event, whereby a new right of way has been created, being a right of way to which this Part of this Act applies;
 - (d) the expiration, in relation to a way in the area of the authority, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path; and
 - (e) the discovery by the authority of new evidence such that, if the authority were then preparing a draft map under the foregoing provisions of this Part of this Act, they would be required by those provisions to show on the map, as a highway of a particular description, a way not so shown on the definitive map, or on the revised map last prepared in accordance with the following provisions of this section, as the case may be.

- (3) A review under subsection (1) of this section shall be carried out at such time as the authority carrying out the review may consider appropriate, so however that the date of review shall not in any case be a date later than the expiration of five years after the relevant date, or the last preceding date of review, whichever is the later:

Provided that nothing in this subsection shall affect the validity of any review carried out under the said subsection (1) or of any document prepared or thing done in consequence of such a review.

- (4) Subject to the following provisions of this section, on completing a review under subsection (1) of this section the authority shall prepare a revised map and statement, consisting of the definitive map and statement, or of the revised map and statement last prepared under this section, as the case may be, subject to such modifications (if any) of the particulars contained therein as may appear to the authority to be requisite having regard to the review, and shall include in the revised statement a note of the date of review.
- (5) If after carrying out a review under subsection (1) of this section it appears to the authority as respects the whole or any part of their area that a revised map and statement prepared in accordance with the last foregoing subsection would not differ from the definitive or last revised map and statement, the authority shall cause notice of that fact, specifying the date of review and how much of their area is affected by the notice, to be published in the London Gazette, and in one or more local newspapers circulating in the area of the authority, and shall not be required to prepare a revised map and statement in consequence of that review in respect of so much of their area as is specified in the notice:

Provided that if within such time (not being less than twenty-eight days) as may be specified in the notice any representation is made to the authority that as respects the whole or part of so much of their area as is specified in the notice a revised map and statement prepared as aforesaid would differ from the definitive or last revised map and statement:

- (a) the authority, after considering the representation and affording to the person by whom it was made an opportunity of being heard by a person appointed by the authority for the purpose, shall determine whether the representation is well founded and shall serve notice of their determination on the person by whom the representation was made;
- (b) any person aggrieved by a determination of the authority under the last foregoing paragraph may, at any time within fourteen days after the service upon him of the notice of determination, serve notice of appeal against that determination on the Minister and on the authority;
- (c) where notice of appeal is duly served under the last foregoing paragraph, the Minister, after giving to the appellant and to the authority an opportunity of being heard by a person appointed by him for the purpose, shall either dismiss the appeal or direct that effect shall be given to the representation;

- (d) if the authority determine that a representation is well founded or the Minister directs that a representation shall have effect, the authority shall be required to prepare a revised map and statement, so however that where the representation relates to part only of their area they shall not by virtue of that representation be required to prepare a revised map and statement for any other part of their area.

Note: See [CA 68 Sch 3 para 14](#) for the timing of reviews begun after 3rd August 1968. In carrying out a review under this subsection the authority shall have regard to the discovery by the authority, in the period mentioned in this subsection, of any new evidence, or of evidence not previously considered by the authority concerned, showing that there was no public right of way over land shown on the map as a public path, or as a road used as a public path, or that any other particulars in the map or statement were not within the powers of this Part of this Act, and their powers of preparing a revised map and statement under subsection (4) or, as the case may be, proviso (d) to subsection (5), of this section may be exercised accordingly: Provided that the authority shall not take account of the evidence if satisfied that the person prejudiced by the public right of way, or his predecessor in title, could have produced the evidence before the relevant date mentioned in this subsection and had no reasonable excuse for failing to do so - amendment made by CA 68 Sch 3.

34. Supplementary provisions as to revision of maps and statements

- (1) A revised map and statement prepared in accordance with the last foregoing section shall be prepared in three successive stages, that is to say in draft, provisional and definitive form respectively; and the provisions of sections twenty-eight to thirty-two of this Act shall apply in relation to a review under the last foregoing section and to the preparation as aforesaid of a revised map and statement as they apply in relation to a survey and to maps and statements prepared in consequence of a survey, but with the following modifications, that is to say –
- (a) for references to the survey, to the surveying authority and the relevant date there shall be substituted references to the review, to the authority carrying out the review and to the date of review respectively;
- (b) for references to the draft, provisional and definitive map and statement there shall be substituted references to the revised map and statement as prepared in draft, provisional and definitive form respectively; and
- (c) the reference in subsection (1) of section thirty-one of this Act to land on which the map shows a public path, or a road used as a public path, shall be construed as relating only to land on which the path or road was not shown, or was differently shown, on the last preceding revised map prepared in definitive form which included that land, or, if there has been no such map, on the definitive map.
- (2) An authority carrying out a review under the last foregoing section shall so determine the date of review as to be not earlier than six months before the date on which notice of the preparation of the revised map and statement in draft form is published in accordance with the provisions of subsection (1) of section twenty-nine of this Act as applied by the last foregoing subsection.
- (3) Where in accordance with subsection (5) of section twenty-seven of this Act two or more definitive maps and statements relating to different parts of the area of an authority have been prepared at different times, the authority shall at one and the same time review the particulars contained in each of those maps and statements; and accordingly the provisions of the last foregoing section shall apply as if the relevant date for the purposes of each of those maps and statements were the earliest of the relevant dates specified therein or such later date as, on the application of the authority, the Minister may in any particular case determine.

Subsections (1) and (2) ceased to apply to reviews begun after CA 1968 came into force Sch 3 Pt II

35. Application of sections 27 to 34 to particular areas

- (1) Subject to the provisions of this section, the foregoing provisions of this Part of this Act (in this and the next following section referred to as "the survey provisions") shall not apply to the administrative county of London.
- (2) The London County Council or the council of a county borough may by resolution adopt the survey provisions as respects any part of the said county or of the county borough, as the case may be, specified in the resolution and those provisions shall thereupon apply accordingly.

- (3) If it appears to the Minister, as respects any part of the administrative county of London or of a county borough, that it is expedient that the survey provisions should apply thereto, and the London County Council or council of the county borough, as the case may be, have not passed a resolution adopting those provisions as respects that part, the Minister may, after consultation with the council in question, make an order directing that those provisions shall apply to that part of the said county or county borough, as the case may be.
- (4) The council of a county, other than the administrative county of London, may by resolution exclude from the operation of the survey provisions any part of the county which appears to the council to be so fully developed that it is inexpedient that those provisions should apply thereto and may by a subsequent resolution revoke or amend a previous resolution under this subsection:
 Provided that a resolution under this subsection shall not have effect unless approved by the Minister.
- (5) Where by virtue of a resolution under subsection (2) of this section, or of an order under subsection (3) thereof, the survey provisions apply to any part of the administrative county of London or of a county borough, those provisions shall have effect in relation thereto—
- (a) in the case of a part of the administrative county of London, as if that part were a separate county and the London County Council were the administrative county thereof, and as if, for references in those provisions to a county district, there were substituted references to a metropolitan borough;
 - (b) in the case of a part of a county borough, as if that part were a county and the county borough council were the council thereof;
 - (c) in either case, as if, for references in section twenty-seven of this Act to the date of the commencement of this Act, there were substituted references to the date on which the resolution or order in question comes into operation;
 - (d) in either case, subject to the modification that subsection (5) of section thirty-three of this Act shall not apply as respects part only of the area to which the order or resolution relates.
- (6) The making or revocation of a resolution or order under this section, or the happening of any other event whereby land becomes or ceases to be comprised in an area to which the survey provisions apply, shall not, as respects any map or statement prepared before the event happened, affect the application in relation to the map or statement of subsection (4) of section thirty-two of this Act or that subsection as applied by subsection (1) of the last foregoing section.

Amended by London Government Act 1963 Sch 18 and LGA 72 Sch 17.

36. Exercise of functions as to surveys, etc., by joint planning boards

- (1) Where under the Act of 1947 a joint planning board is for the time being constituted for a united district, then, if the council of every county wholly or partly comprised in that district consents, the powers and duties under the survey provisions of each of those councils as respects any area comprised in the united district may be exercised and performed by the board; and references in this Part of this Act to the surveying authority shall be construed accordingly.
- (2) Subsection (1) of section twenty-eight of this Act shall have effect in relation to a survey carried out by a joint planning board as if the reference therein to the councils of county districts and parishes included a reference to the council of every county wholly or partly comprised in the area of the board.
- (3) Where by virtue of a resolution passed or order made under the last foregoing section the survey provisions apply to part of a county borough, being a part wholly or partly comprised in a united district for which a joint planning board is constituted, references in the two last foregoing subsections to a county shall be construed as including references to that county borough.
- (4) If, at the date when by virtue of such a resolution or order as aforesaid the survey provisions become applicable to part of a county borough, any functions under those provisions are being exercised by a joint planning board for a united district which includes that part, and the county borough council does not consent to the exercise of those functions by the joint planning board as respects that part, the foregoing provisions of this section shall have effect as if that part were not comprised in the united district.

37. Power of Minister to expedite preparation of maps and statements.

- (1) Where it appears to the Minister that circumstances exist such as are mentioned in the next following subsection and, that by reason of those circumstances the preparation of a provisional map and statement under section thirty of this Act, or the preparation of a definitive map and statement under section thirty-two thereof, has been or is likely to be unduly delayed, the Minister, after consultation with the surveying authority, may direct the authority to prepare the provisional or definitive map and statement, as the case may be, within such time (not being less than three months from the date of the direction) as may be specified in the direction.
- (2) The circumstances referred to in the last foregoing subsection are the following circumstances, that is to say—
 - (a) in the case of a provisional map and statement, that the matters for the time being outstanding are so numerous, or that any such matters are of such a character, as to prevent the completion within a reasonable time of the action required to be taken under section twenty-nine of this Act, and
 - (b) in the case of a definitive map and statement, that by reason of the congestion of business at quarter sessions, or at any committee of quarter sessions to which applications under section thirty-one of this Act are referred, or by reason of the time taken or likely to be taken to dispose of any appeal under subsection (7) of the said section thirty-one, the determination of all applications under the said section thirty-one which, apart from this section, would have to be determined before the definitive map and statement can be prepared is not likely to be completed within a reasonable time.
- (3) Where the Minister gives a direction under subsection (1) of this section as respects the preparation of a provisional map and statement, subsection (3) of section thirty of this Act shall have effect in relation to the preparation thereof with the following modifications, that is to say—
 - (a) the direction may require the surveying authority to disregard representations or objections made under subsection (3) of section twenty-nine of this Act as respects any matter, or matters of any class, specified in the direction, being a matter or matters outstanding at the date of the direction ; and
 - (b) subject to the provisions of the last foregoing paragraph, the surveying authority shall give effect to any representations or objections made with respect to matters outstanding at the date of the direction, being representations or objections made under the said subsection (3) as to anything omitted from the draft map and statement (other than a limitation or condition to which a right of way is alleged to be subject), and shall disregard all other representations or objections made with respect to matters outstanding at that date.
- (4) Where the Minister gives a direction under subsection (1) of this section as respects the preparation of a definitive map and statement, subsection (2) of section thirty-two of this Act shall have effect in relation to the preparation thereof subject to the following modifications, that is to say—
 - (a) any way in respect of which an application under paragraph (a) or paragraph (c) of subsection (1) of section thirty-one of this Act has been made but not finally determined at the date of the direction shall be omitted from the definitive map and statement;
 - (b) any way in respect of which an application under paragraph (b) of the said subsection (1) has been made but not finally determined at the said date shall be shown on the definitive map as if the rights conferred on the public by the public right of way thereover were the rights specified in the application, and not the rights indicated in the provisional map and statement; and
 - (c) in the case of any way in respect of which an application under paragraph (d) of the said subsection (1) has been made but not finally determined at the said date, the definitive statement shall include a note of the limitations or conditions specified in the application and of the fact that the application has been made and has not been finally determined;

and subsection (2) of section thirty-three of this Act shall have effect, in relation to any review of the particulars contained in the definitive map and statement, as if the events therein mentioned included the final determination of any such application as is mentioned in paragraphs (a) to (c) of this subsection.
- (5) The surveying authority shall furnish the Minister with such information, and produce to him for inspection such documents, as he may require for the purposes of this section.
- (6) References in this section to matters outstanding at any time shall be construed as references to matters as to which representations or objections have been made under section twenty-nine of this Act and have not been finally determined before that time.

38. Supplementary provisions as to maps and statements

- (1) Regulations made by the Minister may prescribe the scale on which maps are to be prepared under any of the foregoing provisions of this Part of this Act, and the method of showing or recording thereon, or in any statement required by those provisions to be annexed thereto, anything required by those provisions to be shown or recorded.
- (2) The places at which copies of a draft, provisional or definitive map and statement, or of a revised map and statement prepared in draft, provisional or definitive form, are to be available for inspection in accordance with the provisions of this Part of this Act in that behalf shall include one or more places in each county district comprised in the area to which the map and statement relate and, so far as appears practicable to the surveying authority or the authority carrying out the review, as the case may be, a place in each parish so comprised:
Provided that the authority shall be deemed to comply with the requirement to have a copy available for inspection in a county district or parish if they have available for inspection there a copy of so much of the map and statement as relates to the county district or parish.
- (3) Notwithstanding anything in subsection (1) of section thirty-two of this Act or in the last foregoing subsection, an authority shall not be required to keep available for inspection more than one copy of any definitive map and statement, or revised map and statement prepared in definitive form, if as respects the land to which that map and statement relate a subsequent revised map and statement so prepared have come into operation; and the said one copy may be kept at such place in the area of the authority as they may determine.

Note: The Regulations are the National Parks and Access to the Countryside Regulations SI 1950 No 1066 (as amended).

LONDON GOVERNMENT ACT 1963 c. 33

60. Functions under National Parks and Access to the Countryside Act 1949

- (1) Subject to the provisions of this section, as respects any part of the existing county of Hertfordshire, Essex, Kent or Surrey which on 1st April 1965 ceases to be part of that county and as respects any part of the existing county of Middlesex, any functions under sections 27 to 34 of the National Parks and Access to the Countryside Act 1949 (which relate to the ascertainment of footpaths, bridleways and certain other highways) which on 31st March 1965 still remained to be discharged by the county council shall on 1st April 1965 become functions—
 - (a) in the case of any area falling within a London borough, of the council of that borough ;
 - (b) in the case of any part of the urban district of Potters Bar, of the Hertfordshire county council;
 - (c) in the case of any part of the urban district of Staines or Sunbury-on-Thames, of the Surrey county council;and, in the case of an area mentioned in paragraph (b) or (c) of this subsection, the county council so mentioned shall not be required to discharge as respects that area any functions under the said sections 27 to 34 already discharged by the Middlesex county council.
- (2) As respects any part of a London borough to which the said sections 27 to 34 do not apply by virtue of subsection (1) of this section and as respects any part of the City, subsections (2), (3) and (5) of section 35 of the said Act of 1949 (which relate to the extension of the said sections 27 to 34 to county boroughs) and, as respects any part of any London borough or the City, subsection (4) of that section (which relates to the exclusion of parts of a county from the operation of those sections) shall apply in relation to that London borough and the council thereof or to the City and the Common Council, as the case may be, as they apply in relation to a county borough (or, in the case of the said subsection (4), a county) and the council thereof.

- (3) The London borough council to whom any functions of any county council other than the Middlesex county council are transferred by virtue of subsection (1) of this section may agree with the county council for the performance of any of those functions by that county council on behalf of the borough council; and where by virtue of subsection (1) or (2) of this section the said sections 27 to 34 for the time being apply to any part of any London borough or the City, the borough council or Common Council, as the case may be, may agree with the Greater London Council for the functions of the borough council or Common Council under the said sections 27 to 34 to be discharged by the Greater London Council, and while such an agreement with the Greater London Council is in force—
- (a) references in Part IV of the said Act of 1949 to the surveying authority shall be construed accordingly;
 - (b) section 28 (1) of the said Act of 1949 shall have effect in relation to a survey carried out by the Greater London Council as if the reference therein to the councils of county districts and parishes were a reference to the borough council or Common Council, as the case may be.
- (4) In section 23 of the said Act of 1949, the reference to the local planning authority shall be construed in relation to land in a London borough or the City as a reference to the borough council or, as the case may be, the Common Council.
- (5) The provisions of Part V of the said Act of 1949 with respect to access agreements and access orders and section 90 of that Act shall not apply to the inner London boroughs or the City; and in relation to land in an outer London borough references in sections 64 to 82 and 90 of that Act to the local planning authority shall be construed as references to the borough council.
- (6) In section 89 of the said Act of 1949 the expression " local planning authority ", and in section 99 of that Act the expression " local authority ", shall include the Greater London Council, a London borough council and the Common Council; and in section 102 of that Act—
- (a) the expression " local planning authority " shall include the council of an outer London borough ; and
 - (b) the expression " local authority " shall include the Greater London Council.

Schedule 18 : Repeals

The National Parks and Access to the Countryside Act 1949

Section 35 (1) from the beginning to "this section" and from "shall" onwards.

In section 35 (2), the words "the London County Council, or ", "of the said county or" and "as the case may be".

In section 35 (3), the words "of the administrative county of London or", "the London County Council or" and "said county or" and the words "as the case may be" in both places where they occur.

In section 35 (4), the words "other than the administrative county of London".

In section 35 (5), the words "of the administrative county of London or", paragraph (a), in paragraph (b) the words "in the case of a part of a county borough" and in paragraphs (c) and (d) the words "in either case".

COUNTRYSIDE ACT 1968 c. 41

SCHEDULE 3

PUBLIC RIGHTS OF WAY

PART I

MISCELLANEOUS AMENDMENTS

ACT OF 1949

Section 29 (representations and objections as to draft maps and statements)

The Minister shall give an opportunity of being heard under subsection (6) (appeal to Minister), at the same time as to the appellant, to any other person appearing to the Minister to have an interest in the matter to which the appeal relates.

In paragraph (b) of the said subsection (6) (appeal against decision under subsection (4)) for the words “to reverse the decision” there shall be substituted the words “to vary or reverse the decision”, and the particulars to be contained in the provisional map and statement in accordance with section 30(3) of the Act of 1949 shall reflect any such variation or reversal of the decision.

Section 33 (revision of maps and statements)

In carrying out a review under section 33(1) the authority shall have regard to the discovery by the authority, in the period mentioned in that subsection, of any new evidence, or of evidence not previously considered by the authority concerned, showing that there was no public right of way over land shown on the map as a public path, or as a road used as a public path, or that any other particulars in the map or statement were not within the powers of Part IV of the Act of 1949, and their powers of preparing a revised map and statement under subsection (4) or, as the case may be, proviso (d) to subsection (5), of the said section 33 may be exercised accordingly:

Provided that the authority shall not take account of the evidence if satisfied that the person prejudiced by the public right of way, or his predecessor in title, could have produced the evidence before the relevant date mentioned in the said section 33(1) and had no reasonable excuse for failing to do so.

This amendment applies to a review begun before or after the coming into force of this Act.

Section 38(2) (places where maps and statements are to be available for inspection)

The places at which the maps and statements described in section 38(2) are to be available for inspection shall include the offices of the council of each county district comprised in the area to which the map and statement relates, whether or not the offices are in the county district.

PART II

REVISION OF MAPS AND STATEMENTS

1. Any review or further review begun under section 33 of the Act of 1949 after the coming into force of this Act shall be carried out in accordance with this Part of this Schedule, and subsections (1) and (2) of section 34 of the Act of 1949 shall not apply to it.
2. (1) Before carrying out the review the authority shall consult with the councils of county districts and parishes in the area of the authority as to the arrangements to be made for the provision by the councils of information for the purposes of the review, and subsections (2), (3) and (4) of section 28 of the Act of 1949 shall apply to the arrangements.
(2) If the authority is a joint planning board the reference in sub-paragraph (1) above to the councils of county districts and parishes shall include a reference to the council of every county or county borough wholly or partly comprised in the area of the board.
3. The review shall include the preparation of a revised map and statement in draft.
4. (1) On completing the preparation of the draft map and statement (hereafter called the "draft revision") the authority shall notify the Minister and shall publish in the London Gazette and in one or more newspapers circulating in the area of the authority a notice of the preparation of the draft revision stating—
 - (a) the places where copies of the draft revision can be inspected at all reasonable hours,
 - (b) the time (not being less than 28 days) within which, and the manner in which, representations or objections with respect to alterations effected by the draft revision, or to anything omitted therefrom, may be made to the Minister.(2) If the alterations effected by the draft revision include a new item showing a public path, or a road used as a public path, or any alteration of the particulars concerning a public path, or road used as a public path, section 29(2) of the Act of 1949 (right of owners and other interested persons to require the authority to give information about documents taken into account by the authority) shall apply with any necessary modifications.
(3) If any representation or objection is duly made in respect of alterations effected by the draft revision, or of anything omitted therefrom, and is not withdrawn, the Minister shall cause a local inquiry to be held.

- (4) If any such representation or objection is duly made, and not withdrawn, the Minister shall, subject to the following provisions of this paragraph, and after taking into consideration any report by the person appointed to hold the local inquiry, take a decision on the objection or representation, and if he considers that the draft revision should be modified to give effect to his decision he shall give to the authority such directions as appear to him necessary for the purpose.
 - (5) If it appears to the Minister that any modification which he proposes to make under sub-paragraph (4) above may adversely affect any persons other than the person who made the representation or objection, he shall, before giving any direction to the authority, afford to those persons an opportunity of being heard by a person appointed by the Minister.
5. (1) This paragraph has effect as respects the revised map and statement, if any, to be prepared under subsection (4) or proviso (d) of subsection (5) of section 33 of the 1949 Act (map and statement to be prepared on completion of the review except where there is no change.)
 - (2) The map and statement shall be prepared as soon as may be after the time prescribed by the notice under paragraph 4(1)(b) above, and after any representations or objections duly made, and not withdrawn, have been dealt with by the Minister.
 - (3) The authority shall publish in the London Gazette and in one or more newspapers circulating in the area of the authority notice of the preparation of the map and statement, and of places where copies of the map and statement may be inspected at all reasonable hours.
 - (4) The particulars to be contained in the map and statement shall be those contained in the draft revision, subject to such modifications as may be required for giving effect to any direction given by the Minister under paragraph 4(4) above.
 - (5) The authority shall furnish to the Minister such number of copies, of the revised map and statement, prepared in definitive form, as he may require.
 - (6) Subsections (4), (5) and (6) of section 32 of the Act of 1949 (effect of definitive maps and statements) shall apply to the said revised map and statement as they apply to an (unrevised) definitive map and statement.
 6. This Part of this Schedule shall be construed as one with section 33 of the Act of 1949.

PART III

ROADS USED AS PUBLIC PATHS

The special review

7. In this Part of this Schedule the “special review” carried out by any authority means the first review begun by that authority after the coming into force of this Act.
8. (1) Subject to the provisions of this paragraph, the draft revision in the special review shall be published not later than three years after the date of the coming into force of this Act.
 - (2) If on the said date the authority have not completed a survey or revision begun earlier—
 - (a) the draft revision in the special review shall be published not later than three years after the date of the coming into force of this Act, or one year after notice is published of the completion of the survey or earlier review, whichever is the later,
 - (b) the special review (hereafter in this Schedule called a “limited special review”) shall be confined to a review of roads used as public paths in accordance with this Part of this Schedule:

Provided that if on a review begun before the date of the coming into force of this Act no revised map and statement has been published in draft before that date, the review shall be abandoned, and shall be begun again under Part II of this Schedule.
 - (3) If it appears to the Minister that any stage of a special review has been or is likely to be unduly delayed, he may give to the authority such directions as appear to the Minister appropriate for expediting the review, and it shall be the duty of the authority to comply with the directions.

Reclassification of roads used as public paths

9. (1) In the special review the draft revision, and the definitive map and statement, shall show every road used as a public path by one of the three following descriptions—
 - (a) a “byway open to all traffic”,
 - (b) a “bridleway”,
 - (c) a “footpath”,
 and shall not employ the expression “road used as a public path” to describe any way.

- (2) As from the date of publication of the definitive map and statement in the special review—
 - (a) each way shown in the map in pursuance of this paragraph by any of the three descriptions shall be a highway maintainable at the public expense,
 - (b) subject to paragraph (c) below, any entry in the map describing a way as a "byway open to all traffic" shall be conclusive evidence of the existence on the date of publication of a public right of way for vehicular and all other kinds of traffic,
 - (c) section 32(4)(c) of the Act of 1949 (position and width, and limitations or conditions affecting the public right of way, as shown in the statement) shall apply to any byway so shown as it applies to a footpath or bridleway.
- (3) In this paragraph "road used as a public path" means—
 - (a) a way which is shown as a "road used as a public path" in the last definitive map and statement, or
 - (b) a way which is shown as a "bridleway" or as a "footpath" in the last definitive map and statement, and which in the opinion of the authority ought to have been there shown as a road used as a public path, or
 - (c) where the special review is not a limited special review, a way which in the opinion of the authority would, but for the provisions of this Part of this Schedule, have fallen to be shown, in the definitive map and statement resulting from the special review, as a road used as a public path.
- (4) In subsection (2)(a) and in subsection (5) of section 51 of the Act of 1949 (long distance routes) references to roads used as public paths shall include references to any way shown on a definitive map and statement as a "byway open to all traffic".
- (5) Nothing in this paragraph shall limit the operation of road traffic orders under the Road Traffic Regulation Act 1967 or oblige a highway authority to provide, on a way shown on a definitive map as a "byway open to all traffic", a metalled carriageway, or a carriageway which is by any other means provided with a surface suitable for the passage of vehicles.

Test for reclassification

10. The considerations to be taken into account in deciding in which class a road used as a public path is to be put shall be—
 - (a) whether any vehicular right of way is shown to exist,
 - (b) whether the way is suitable for vehicular traffic having regard to the position and width of the existing right of way, the condition and state of repair of the way, and the nature of the soil,
 - (c) where the way has been used by vehicular traffic, whether the extinguishment of vehicular rights of way would cause any undue hardship.

Procedure on special review

- 11.(1) Part II of this Schedule shall apply to a special review subject as follows.
 - (2) The published notices shall state that the review reclassifies roads used as public paths.
 - (3) The representations or objections referred to in paragraph 4 in Part II shall include representations or objections with respect to the reclassification of any road used as a public path.
 - (4) The time, as stated in the published notice of the draft revision, within which any representation or objection (of any description) may be made to the draft revision shall not be less than four months.

Survey begun after commencement of Act

- 12.(1) Subject to the provisions of this paragraph, paragraphs 9 and 10 above shall apply to an initial survey begun after the coming into force of this Act as if it were the first review so begun.
 - (2) In paragraph 9(1), as applied to the survey, for references to the draft revision and the definitive map and statement there shall be substituted references to the map and statement in draft, provisional and definitive form, and in paragraphs 9 and 10, as applied to the survey, "road used as a public path" shall mean a way which in the opinion of the authority would, but for the provisions of this Part of this Schedule, have fallen to be shown, in the definitive map and statement resulting from the survey, as a road used as a public path.

Interpretation and construction

- 13.(1) In this Part of this Schedule references to a definitive map and statement include references to a revised map and statement prepared in definitive form.
- (2) This Part, and Part IV, of this Schedule shall be construed as one with Part IV of the Act of 1949.

PART IV

TIMING OF REVIEWS

- 14.(1) The period covered by a review, that is to say the period between the two dates specified in section 33(1) of the Act of 1949, shall not exceed five years:
Provided that this sub-paragraph shall not affect the validity of any review or of any document prepared or thing done in consequence of a review.
- (2) The interval between the end of a period covered by a review and the publication of the draft revision shall be—
 - (a) in the case of the special review, not more than two years, and
 - (b) in the case of any subsequent review, not more than six months.
- (3) In the case of a limited special review—
 - (a) sub-paragraphs (1) and (2) above shall not apply, and
 - (b) the period covered by the next subsequent review shall begin with the relevant date for the original survey, or the date of review of the last review before the special review, whichever is the later.
- (4) Section 33(3) of the Act of 1949 (which is superseded by sub-paragraph (1) above) shall not apply to a review begun after the coming into force of this Act.

COURTS ACT 1971 c. 23

Schedule 11 : Repeals

National Parks and Access to the Countryside Act 1949

In section 31, in subsection (2) paragraphs (a) and (d), and in subsections (3), (4), (5) and (6) the words “or committee”, wherever they occur, and subsection (7).

HIGHWAYS ACT 1971 c. 41

75. Amendment of law regulating certain reviews of public paths, etc

The Countryside Act 1968 shall be deemed to have been enacted with the following provision in place of paragraph 8(2)(b) of Schedule 3 (which Part relates to the first review begun under section 33 of the National Parks and Access to the Countryside Act 1949 after the coming into force of the said Act of 1968 and to the reclassification in the course of that review of roads used as public paths):-

"(b) the special review may, if the authority consider it unnecessary to do more than review the roads used as public paths, be confined to a review of such roads in accordance with this Part of this Schedule, and a review which is so confined is hereafter in this Schedule called a 'limited special review' ".

LOCAL GOVERNMENT ACT 1972 c. 70

184. National Park and countryside functions.

....

- (7) Sections 27 to 38 of the said Act of 1949 and Parts II to IV of Schedule 3 to the said Act of 1968 (survey of public paths, etc) shall have effect subject to the modifications specified in Part II of the said Schedule 17 and those Acts shall have effect subject to the further modifications specified in Part III of that Schedule.

Schedule 17

PART II

SURVEY OF PUBLIC PATHS, ETC.

22. The county council shall be the surveying authority for the purposes of the following provisions (being provisions relating to the ascertainment of footpaths, bridleways and certain other highways), that is to say, sections 27 to 38 of the 1949 Act and Parts II to IV of Schedule 3 to the 1968 Act for any area in England and Wales, elsewhere than Greater London and the Isles of Scilly, and shall have the functions of a county borough council under section 35 of the 1949 Act in any such area and accordingly for references in that section, in its application to any such area, to a county borough and its council there shall be substituted references to a county and its council.
23. A new county council shall, except as provided by this Part of this Schedule, continue to carry out as respects their area or any part of it any survey, review, further review or special review under the provisions mentioned in paragraph 22 above which has been begun as respects that area or part, or any other area including that area or part, by an existing county council or county borough council and those provisions shall apply to the survey, review, further review or special review subject to such exceptions and modifications as the Secretary of State may in any particular case direct.
24. Where on any such survey of any area under section 27 of the 1949 Act a draft map and statement has, but a provisional map and statement has not, been published before 1st April 1974, the county council may if they think fit take no further steps in relation to the draft map and statement and instead prepare a new draft map and statement for that area under that section and that section and sections 28 and 29 of that Act (survey information, and representations and objections) shall apply to the new review subject to such exceptions and modifications as the Secretary of State may in any particular case direct.
25. Where on any such review of any area under any of the provisions mentioned in paragraph 22 above no revised draft map and statement has been published before 1st April 1974, the review shall be abandoned and the county council shall begin a new review of that area or so much of it as lies within the county after that date under those provisions, and those provisions shall apply to the review subject to such exceptions and modifications as the Secretary of State may in any particular case direct.
26. Where a revised map and statement has been published in draft before that date under any of those provisions, but a revised map or statement has not been published in provisional or, as the case may be, definitive form, before 1st April 1974, the county council may if they think fit take no further steps in relation to the draft revised map and statement and instead prepare and publish a new revised map and statement in that form for that area under those provisions, and those provisions shall apply to the new review, subject to such exceptions and modifications as the Secretary of State may in any particular case direct.
27. Any area to which sections 27 to 34 of the 1949 Act (the survey provisions) do not apply immediately before 1st April 1974 by virtue of the fact that it is or forms part of an existing county borough shall on and after that date continue to be excluded from the operation of those sections except so far as they are adopted under section 35(2) of that Act as respects the whole or part of that area.
28. In section 35(4) of that Act, after 'thereto' there shall be inserted the words 'and may by a subsequent resolution revoke or amend a previous resolution under this subsection'.
29. Where in consequence of any survey, review, further review or special review begun under any of the provisions mentioned in paragraph 22 above two or more definitive maps and statements are prepared whether before or after 1st April 1974 for different parts of a new county, the county council shall not take any further steps under those provisions in relation to those maps and statements until all such maps and statements have been prepared for the whole of their area (less any part of it excluded by paragraph 27 above).
30. Where all such maps and statements have been prepared for the whole of that area, the county council shall at one and the same time review the particulars contained in each of those maps and statements ; and accordingly section 33 of the 1949 Act and Parts II to IV of Schedule 3 to the 1968 Act (periodical revision of maps and statements) shall apply as if the relevant date for the purposes of each of those maps and statements were the earliest of the relevant dates specified therein or such later date as, on the application of the county council, the Secretary of State may in any particular case direct.
31. Where the Secretary of State gives a direction under this Part of this Schedule, he shall take such steps as he thinks appropriate for bringing it to the notice of persons who may be affected by it.
32. Section 28(3) of the 1949 Act shall not apply to Wales and in that subsection the word 'rural' shall be omitted and for the words 'representative body of the parish or a member of that body' there shall be substituted the words 'chairman of the parish meeting or any person representing the parish on the district council'.

33. In this Part of this Schedule any reference to a definitive map and statement includes a reference to a revised map and statement prepared in definitive form.

Schedule 30 : Repeals

National Parks and Access to the Countryside Act 1949

In section 28(3), the word "rural".

Section 36.

WILDLIFE AND COUNTRYSIDE ACT 1981 c. 69

54. Duty to reclassify roads used as public paths

- (1) As regards every definitive map and statement, the surveying authority shall, as soon as reasonably practicable after the commencement date,-
- (a) carry out a review of such of the particulars contained in the map and statement as relate to roads used as public paths; and
 - (b) by order make such modifications to the map and statement as appear to the authority to be requisite to give effect to subsections (2) and (3);
- and the provisions of Schedule 15 shall have effect as to the making, validity and date of coming into operation of orders under the subsection.
- (2) A definitive map and statement shall show every road used as a public path by one of the three following descriptions, namely-
- (a) a byway open to all traffic;
 - (b) a bridleway;
 - (c) a footpath.
- and shall not employ the expression 'road used as a public path' to describe any way.
- (3) A road used as a public path shall be shown in the definitive map and statement as follows-
- (a) if a public right of way for vehicular traffic has been shown to exist, as a byway open to all traffic;
 - (b) if paragraph (a) does not apply and public bridleway rights have not been shown not to exist, as a bridleway; and
 - (c) if neither paragraph (a) nor paragraph (b) applies, as a footpath.
- (4) Each way which, in pursuance of an order under subsection (1), is shown in the map and statement by any of the three descriptions shall, as from the coming into operation of the order, be a highway maintainable at the public expense; and each way which, in pursuance of paragraph 9 of Part III of Schedule 3 to the 1968 Act, is so shown shall continue to be so maintainable.
- (5) In this section 'road used as a public path' means a way which is shown in the definitive map and statement as a road used as a public path.
- (6) In subsections (2)(a) and (5) of section 51 of the 1949 Act (long distance routes) references to roads used as a public path shall include references to any way shown in a definitive map and statement as a byway open to all traffic.
- (7) Nothing in this section or section 53 shall limit the operation of traffic orders under the Road Traffic Regulation Act 1984 or oblige a highway authority to provide, on a way shown in a definitive map and statement as a byway open to all traffic, a metalled carriage-way or a carriage-way which is by any other means provided with a surface suitable for the passage of vehicles.
-

REGULATIONS

THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE REGULATIONS 1950 SI 1950 NO 1066

PART I

Citation, commencement and interpretation

1. These Regulations may be cited as the National Parks and Access to the Countryside Regulations 1950, and shall come into force on the sixth day of July, 1950.
2. In these Regulations-
 - (1) "the Act" means the National Parks and Access to the Countryside Act, 1949;
"the Minister" means the Minister of Town and Country Planning;
"the Commission" means the National Parks Commission.
 - (2) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Public rights of way

3. For the purposes of this Part of these Regulations-
"rights of way map" means a map prepared in accordance with Sections 27, 30, 32 or 33 of the Act respectively;
"the surveying authority" means the authority by whom the map is prepared;
(...)
"public path", "footpath", "bridleway", and "road used as a public path", have the meanings assigned to them in Section 27 of the Act;
"notice of determination" means notice of a determination made under Section 29 of the Act.

Rights of Way Maps

4. A rights of way map shall be on a scale of not less than two and a half inches to one mile: and where the surveying authority consider it expedient to show any particulars required to be shown on the map on a larger scale than that on which the map is prepared, they may insert an inset map for that purpose.
5. Rights of way, or alleged rights of way shall be shown on a rights of way map in the following manner-
Footpath, by means of a purple line.
Bridleway, by means of a green line.
Road used as a public path, by means of a broken green line

Modification of Particulars contained in Draft Rights of Way Maps

6. A notice of determination shall be in the form (or substantially in the form) set out in the Second Schedule hereto.

[Remainder of regulations not included..]

SCHEDULE

[Forms 1 to 6 not included.]

Form No. 7. Notice of Determination to Modify Particulars Contained in Draft Rights of Way Map

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

Notice is hereby given that the (name of the surveying authority in exercise of the powers conferred on them by Subsection (3) of Section 29 of the National Parks and Access to the Countryside Act, 1949, have determined to modify the particulars contained in the draft rights of way map and statement prepared under Section 27 of the above mentioned Act in relation to the rights of way within the area of the said Council by the [deletion of a public path being a [footpath] [bridleway] [road used as a public path] [addition of a way to be shown in the draft rights of way map as a [footpath] [bridleway] [road used as a public path] situate at (insert description in general terms) and shown on a map which has been deposited at ***** and which may be seen there free of charge between the hours of ***** and *****.

Any representation or objection with respect to this determination shall be made in writing addressed to (address of surveying authority) before the ***** day of (insert a date not less than 28 days from date of notice) and shall state the grounds on which it is made.

Dated this ***** day of *****, 19**.

THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE (AMENDMENT) REGULATIONS 1963 SI 1963 NO 968

1. (1) These regulations may be cited as the National Parks and Access to the Countryside (Amendment) Regulations, 1963, and shall come into force on 27th May, 1963.
- (2) The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.
2. The following regulation shall be substituted for regulation 5 of the National Parks and Access to the Countryside Regulations, 1950

"5. Rights of way or alleged rights of way shall be shown on a rights of way map in any of the following manners:-

Footpath, by a continuous purple line, or by a continuous line with short bars at intervals, as thus:-



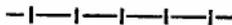
or by a broken black line with short intervals, as thus:-



Bridleway, by a continuous green line, or by a continuous line with cross bars, at intervals, as thus:-



or by a broken line with cross bars in the intervals, as thus:-



Road used as a public path, by a broken green line, or by a broken line and small arrowheads, as thus:-



THE NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE (AMENDMENT) REGULATIONS 1970 SI 1970 NO 675

1. (1) These regulations may be cited as the National Parks and Access to the Countryside (Amendment) Regulations, 1970, and shall come into force on 26th May 1970.
- (2) The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.
2. Regulation 2 of the National Parks and Access to the Countryside (Amendment) Regulations 1963(c) is hereby revoked.
3. The following regulation shall be substituted for regulation 5 of the National Parks and Access to the Countryside Regulations, 1950

"5. Rights of way or alleged rights of way shall be shown on a rights of way map in any of the following manners:-

Footpath, by a continuous purple line, or by a continuous line with short bars at intervals, as thus:-



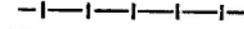
or by a broken black line with short intervals, as thus:-



Bridleway, by a continuous green line, or by a continuous line with cross bars, at intervals, as thus:-



or by a broken line with cross bars in the intervals, as thus:-



Road used as a public path or byway open to all traffic, by a broken green line, or by a broken line and small arrowheads, as thus:-



GUIDANCE

CIRCULAR No. 81 of 1950

MINISTRY OF TOWN AND COUNTRY PLANNING.

32, ST. JAMES'S SQUARE.

LONDON, S.W.1.

17th February, 1950.

To: County Councils (England and Wales)

For information:

County borough councils

Borough councils

Urban district councils

Rural district councils

Parish councils

Parish meetings (England and Wales)

SIR,

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

1. I am directed by the Minister of Town and Country Planning to refer to the provisions of sections 27 and 28 of the National Parks and Access to the Countryside Act, which require county councils to carry out a survey of public rights of way, and to make arrangements with the councils of county districts and parishes in their areas for these authorities to supply information for the purposes of the survey. I am to say that the Minister hopes that all surveying authorities will make the arrangements with other authorities immediately, so that the survey may be begun without delay.

2. The varying circumstances of different parts of the country will doubtless call for different types of arrangements, and the Minister does not propose to recommend any standard arrangements to authorities. I am, however, to say that he hopes that surveying authorities will take full advantage of the knowledge and enthusiasm of the local inhabitants about these matters. Much information can be obtained from or through members of local councils, especially parish councils, and of various voluntary societies as well as from private individuals and it is considered likely that a great deal of the compilation of information and actual inspection of the paths will often be satisfactorily carried out by volunteers. Where information for the survey can be supplied by such voluntary assistance, there should be no need for the surveying authorities to employ any special staff to deal with that part of the survey. But it will still be for them to form an opinion, on the information supplied to them and on any legal and documentary evidence which they may have, whether any right of way subsists or is reasonably alleged to subsist : and they may be required to defend this opinion, should it be disputed.

3. For the guidance of those authorities or of persons providing information to the surveying authorities, the Minister has arranged for the distribution to county councils of copies of a pamphlet entitled "Survey of Rights of Way" prepared by the Commons, Open Spaces and Footpaths Preservation Society in collaboration with the Ramblers' Association. The methods described in the pamphlet have been approved

as suitable for the purpose by the Department. County Councils will shortly receive sufficient copies of this pamphlet and of this circular to supply two copies to each borough and district council in their area, and one copy to each parish council or parish meeting, and I am to ask that they will distribute copies as soon as they get them. There will also be five for the county council. Any further copies which may be required by local authorities, or by voluntary organisations may be obtained from the Society, price ninepence.

4. Where the surveying authority arranges with parish councils for them to supply the information about rights of way from a survey in the field, the only expenditure likely to fall on the parish will be on account of the purchase of maps, and although the power to make contributions under Section 99 would not be available in such cases, the Minister is advised that the surveying authority could arrange to supply any necessary maps to the parish as part of any arrangements made under Section 28. Where voluntary organisations assist in this work, it will no doubt be convenient for their assistance to be taken into account when the arrangements under Section 28 are being made, and for them to work as voluntary agents for one or other of the authorities concerned. Where information about rights of way in an area has already been collected by surveying authorities or by voluntary societies the surveying authorities will no doubt wish to take advantage of work already done before making the arrangements under Section 28, so that any further survey undertaken can be so arranged as to supplement and check the existing information and repetition of work may be avoided.

5. The Minister's Regional Controllers will be available to give any further advice or assistance which local authorities may desire in making their arrangements.

6. Another circular will be addressed to local authorities in due course on other Sections in Part IV of the Act.

I am, Sir,

Your obedient Servant,

EVELYN SHARP,

Deputy Secretary.

This transcript has been made available on the Blue Book Extra website with the permission of the Open Spaces Society and the Ramblers' Association as copyright holders.

SURVEYS AND MAPS
of
PUBLIC RIGHTS OF WAY

**for the purposes of PART IV of the National Parks and Access to the
Countryside Act, 1949**

**Memorandum prepared by the COMMONS, OPEN SPACES AND FOOTPATHS
PRESERVATION SOCIETY in collaboration with the Ramblers Association;
recommended by the County Councils Association**

and approved by the

MINISTRY OF TOWN AND COUNTRY PLANNING

COMMONS, OPEN SPACES AND FOOTPATHS PRESERVATION SOCIETY
71 ECCLESTON SQUARE, WESTMINSTER, S.W.1

January, 1950 Price 9d.

Annotations such as [2] indicate where pages start in the printed booklet

[2]

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."

[3]

"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, [4] 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 [5] 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.

[6]

- (v) Other pamphlets issued by the Society describe public paths and how they arise. (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.)) 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 viewpoints, 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.

[7]

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.
- (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.

[8]

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.

[9]

- (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.

[10]

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 {

MEANS OF PASSAGE

	Mark
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 [12] 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 [13] 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 fleidgate (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.

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- (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 fore 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.

[16]

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.

CIRCULAR No. 91 of 1950

MINISTRY OF TOWN AND COUNTRY PLANNING.

32, ST. JAMES'S SQUARE.

LONDON, S.W.1.

30th June, 1950.

To: Local Authorities (England and Wales)

SIR,

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

PUBLIC RIGHTS OF WAY

1. I am directed by the Minister of Town and Country Planning to refer to Part IV of the National Parks and Access to the Countryside Act, 1949. and to enclose copies of the National Parks and Access to the Countryside Regulations, 1950. These Regulations deal with matters arising under various parts of the Act and a further circular will be addressed to local authorities later. This circular is confined to questions arising under Part IV.
2. Local authorities have now received copies of Circular No. 81 and the memorandum on the Rights of Way Survey. These dealt specially 'with the collection and recording of material for the Survey up to the point at which it is to be sent to the "surveying authority ". The object of the present circular is to help surveying authorities on the subsequent stages of the survey, and to refer to certain points on the remainder of Part IV of the Act. For convenience, the comments follow the broad divisions of Part IV, namely Survey (Sections 27-38); Creation, Diversion and Closure of Public Paths (Sections 39-46); liability for repair and miscellaneous matters (Sections 47-50 and 56-58), and Long-Distance Routes (Sections 51-55).
3. The Minister does not intend to issue a general explanatory memorandum on Part IV of the Act, but he will issue circulars as required.

Survey

4. The National Parks and Access to the Countryside Regulations, 1950, Part II, Paragraph 4, prescribe a scale of not less than 2½ in. to the mile for draft, provisional and definitive maps. The Minister considers that the minimum scale will ordinarily be suitable, with insets where necessary on a scale of 6 in. or 25 in. to the mile. Surveying authorities are asked to make use of Ordnance Survey maps for the purpose.
5. Surveying authorities are required to put on the draft map paths over which they consider rights of way exist or are reasonably alleged to exist. All the paths likely to come forward for serious consideration should, if possible. be included in the draft map, and border-line cases should be decided in favour of inclusion rather than omission at the first stage.
6. The phrase "road used as a public path" which is defined in Section 27 is intended to describe highways such as the Berkshire Ridgeway, and other "green ways" which are now mainly used as footpaths and bridleways. although greater public rights of passage over them exist or are alleged to exist.
7. Some doubt may arise as to the matter which should be included in the statement referred to in Section 27 (4). A balance has to be struck between putting in particulars which may be impossible to establish, if challenged, and omitting particulars. which will, if omitted, be brought forward subsequently by interested persons. When the position or width of a path is defined in an award (or order or agreement under' this Act), or other legal document, it is desirable that the statement should include the relevant details. Where there is no legal authority, but practical reasons make it desirable to define more accurately than is possible on the map the actual land over which the public. are alleged to have rights or that a limitation or condition on the exercise of the public rights should be specifically stated, it would be advisable to include particulars

of these matters in the statement where there is not likely to be any dispute about the facts. Whether or not such particulars should still be included in the statement even though there may be dispute about the facts must depend on the circumstances of the particular case. If a good deal of trouble is likely to arise from leaving certain particulars unsettled, it would be worth while to risk some difficulty in attempting to settle them by the statement.

8. The Minister does not propose to make regulations under Section 38 as to the method of recording particulars in the statement unless experience shows this to be necessary. For the purpose of identifying details in the statement, the symbols recommended in the pamphlet on the Rights of Way Survey should be adopted.

9. When the definitive map is prepared under Section 32, surveying authorities are asked to furnish the Minister with two copies.

10. In order to facilitate the periodical revision of maps, surveying authorities should arrange with district councils to send them copies of any orders creating, diverting, or closing paths in their area.

Creation, Diversion and Closure of Public Paths

11. Authorities who may exercise the powers of the Act to make, divert or close public paths, should ensure that all the important interests likely to be affected are consulted before orders are submitted to the Minister for approval. These authorities are required by the Act to secure the agreement of the planning authorities for the area (when they are not the same) before exercising their powers in any particular case. They should consult with the Provincial Land Commissioners of the Ministry of Agriculture and Fisheries before agreeing to the creation or diversion of a path which is likely to affect agricultural interests. If the creation or diversion of a path involves the creation of a new access on to a trunk road, they should consult the Divisional Road Engineer of the Ministry of Transport.

12. Although, where paths are created by order, there is an opportunity for public representation and objection, and special Parliamentary procedure is available for the protection of statutory undertakers, authorities should consult bodies such as the British Railways or the Inland Waterways Executive when their interests are affected, to secure as much agreement as possible before making an order. They should also consult Catchment Boards and other land drainage authorities wherever a proposed path would cross or affect the works of such authorities.

13. Similar consultations will be necessary where authorities create paths by agreement: it may also be appropriate to consult any private interests who might be affected by such an agreement.

14. There will be some cases in which either the powers of Sections 42 and 43 of the National Parks Act or the powers of Section 49 of the 1947 Act could be used to divert or close a path. Where a case clearly falls within the scope of Section 42 or 43 of the National Parks Act, it would be simpler and more appropriate for that procedure to be used.

Liability for Repair and Miscellaneous Matters

15. The Act now places the primary responsibility for the repair of public paths on highway authorities. The Minister does not wish to lay down in detail a standard to be adopted for the various kinds of paths. No practical difficulty should be found in adopting a treatment suitable to the reasonable requirements of those who use the path; whatever is done should harmonise with the surroundings, in appearance and in general character. Where country paths are used constantly as part of everyday life (going to the station, the church, or the shops), there is much to be said for maintaining or even making them up so that they are not only usable but convenient for all persons and in all weathers, and indeed it may be essential to do so. But there are many country paths or tracks, which, apart from occasional obstruction or failure, virtually maintain themselves. Metalling or other making up in such cases would be unnecessary, and nothing more than minor attention will be needed from one year's end to another. Where paths are used mainly for pleasure by ramblers, it will no doubt generally be sufficient that they should be free from obstructions or impassable water or mud, and that they should be inconspicuously but sufficiently signposted or marked where necessary. The main consideration is clearly that they should serve their

purpose, whether business or pleasure, and not that they should conform to some arbitrary standard of construction.

16. While Section 56 now makes it possible for farmers to plough up paths where the needs of agriculture make this necessary, subject to prior notification of the highway authority, the Minister would remind authorities that this does not legalise previous ploughing up of paths except where there was a specific right to do so. He would ask authorities not only to be vigilant to ensure that the provisions of Section 56 as to prior notification and speedy restoration are complied with in the future, but also to make use of their powers under this Section to secure the restoration of paths which were ploughed up during the war. No doubt information about such paths will come to light in the course of the survey.

17. Certain County Councils have not thought it desirable to make byelaws under Section 249 of the Local Government Act, 1933. controlling the keeping of bulls in fields or enclosures across which a footpath runs. Danger to the public undoubtedly may arise when bulls are kept in fields or enclosures of normal size through which a public path runs, and the authorities who have not already done so should consider in the light of local circumstances whether it is desirable to make byelaws to cover such cases.

Long-Distance Routes

18. The National Parks Commission will approach the local authorities concerned for information and for consultations under Section 51 (4) of the Act as occasion arises. It will be appreciated that until the surveys of rights of way have been completed, and indeed, until definitive maps are available, the Commission will need certain information about paths which only the surveying authorities will have readily available, or can obtain. The Minister hopes that when such authorities are approached by the Commission, they will give all the help they can.

I am, Sir,

Your obedient Servant,

E. H. T. WILTSHIRE.

CIRCULAR No. 20 of 1951

MINISTRY OF LOCAL GOVERNMENT AND PLANNING.

23, SAVILE ROW

LONDON, W.1.

21st May, 1951

To: Local Authorities (England and Wales)

SIR,

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

PUBLIC RIGHTS OF WAY

SURVEY OF PUBLIC RIGHTS OF WAY.

LAND OCCUPIED BY SERVICE DEPARTMENTS

1. I am directed by the Minister of Local Government and Planning to refer to the Survey of Public Rights of Way which is being carried out under the provisions of Section 27 of the above named Act and about which Ministry of Town and Country Planning Circulars Nos. 81 and 91 have already been issued.
2. in some areas local authorities have had difficulty in collecting information about Rights of Way which subsist or are alleged to subsist over land occupied by Government Departments, particularly land held

by the Service Departments where security considerations arise. Arrangements have now been made with the Departments concerned who have agreed to help local authorities either by allowing access for the purposes of the survey or, if this is not possible, by providing what information they can about any paths over their land.

3. The arrangements with the Departments are as follows:-

- (a) Admiralty: The Local Surveyor of Lands (see Appendix 1) should be approached.
- (b) War Office: The Command Land Agent (see Appendix 2) should be approached.
- (c) Air Ministry: The Superintending Engineer of the Works Area (see Appendix 3) should be approached. (In this connection it should be noted that in the past the Air Ministry have notified parish Councils of any closure or diversion of footpaths under the Defence Act, 1842. In future they will notify County Councils who are asked to inform the parish and district councils concerned.)
- (d) Ministry of Supply:
 - (i) Application should be made to Ministry of Supply Headquarters (F.5.D.) Shell-Mex House, Strand, London, W.C.2, for information about any permanent or temporary closures of paths of which the local authorities are not already aware.
 - (ii) Application should be made to Local Superintendents for access over land. Access may on occasion be given but the Department will not be held liable for any damage or injury to any person who gets access under these arrangements to rights of way which have been temporarily stopped up. Where access cannot be given the Local Superintendent will provide information about the condition and location of paths temporarily closed.
- (e) Ministry of Civil Aviation: Local Authorities should write to Ministry of Civil Aviation Headquarters, Ariel House, Theobalds Road, London, W.C.1. When writing to the Ministry of Civil Aviation, local authorities are asked to give Grid references related to the Ordnance Survey Maps or other adequate means of identifying the paths in question.

4. It is hoped that these arrangements will help authorities in completing their survey and that authorities will inform parish councils where appropriate.

I am, Sir,

Your obedient Servant,

E. H. T. WILTSHIRE.

[Text of appendices not reproduced.]

CIRCULAR No 53/1952

Ministry of Housing and Local Government

Whitehall

London, S.W.1.

23rd June, 1952

To County Councils (England and Wales) and County Boroughs who have adopted the Survey provisions of Part IV of the Act.

Sir,

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

I am directed by the Minister of Housing and Local Government to refer to Part IV of the National Parks and Access to the Countryside Act, 1949 and to enclose, for your use as surveying authority, copies of The Public Rights of Way (Applications to Quarter Sessions) Regulations 1952 which have been made by the Home Office under subsection (2) of Section 31. Copies of these Regulations have already been sent by the Home Office to Clerks of the Peace.

It is unlikely that all the people affected will be aware of their rights under the Act and I am to ask that your notice of the preparation of the Provisional Map under Section 31 should mention the rights of owners, lessees and occupiers under Section 31(1), and should whenever possible state the committee and court to which they should apply. It might also be helpful if the full provisions of Section 31(1) and the enclosed Regulations were open for inspection by the public along with the Provisional Map.

I am also to ask that when serving any notices of determinations under subsection (3) of Section 29 or decisions under sub-section 4(b) of that section you will where appropriate include a reminder that there is an opportunity for appeal under subsection (5) and that notice of appeal should be made within 28 days and sent to both the surveying authority and the Secretary of the Ministry at the above address. Again it might be helpful if authorities who have still to publish draft maps arrange for the provisions of Section 29 to be on view with the maps.

I am, Sir,

Your obedient Servant,

E. H. T. WILTSHIRE.

CIRCULAR No. 58/1953

MINISTRY OF HOUSING AND LOCAL GOVERNMENT,
WHITEHALL,
LONDON, S.W.1.

14th October, 1953.

To County Councils and Councils of County Boroughs, England

SIR,

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

I am directed by the Minister of Housing and Local Government to refer to the Survey of Public Rights of Way about which Circulars Nos. 81 and 91 and 53/52 have already been issued.

Since the preparation of the first Draft Maps was completed, the Minister's attention has been drawn to several problems which have been encountered in arranging for the deposit of the maps, in giving notice of their preparation and in dealing with objections and representations. He thinks it may be of assistance to surveying authorities to know of these difficulties, and of certain ways in which it has been found possible to overcome them.

Most of the problems to which his attention has been drawn concern the arrangements for the deposit of the Draft Map, and the first of these is one mentioned by the Central Rights of Way Committee. They report that in some areas where Draft Maps have already been published, it has been impossible for members of the public to inspect the maps out of normal working hours, and those most interested—particularly if they live or work outside the area—have had to take time off from work to see the maps. The difficulty has been met in some areas by depositing copies of the map in places such as public libraries which stay open after normal working hours—in other areas by displaying the maps in the office windows, usually a different section being displayed each month in view of the size of the maps, with the remainder available for inspection within the office. In others, special arrangements have been made for particular persons or representatives of voluntary bodies to inspect the Draft Map in its normal place of display, but during out-of-office hours.

Surveying authorities will no doubt agree that whatever arrangements are made for publication, the aim is to enable as many persons as possible to inspect the maps. They are therefore urged to ensure that the maps are displayed in places in the parishes which are generally accessible, and that good publicity is given locally. If for any reason deposit in parishes is not practicable, it seems to the Minister especially desirable that notices should be posted in the parish, saying where the maps can be inspected, and that the Parish Council or Meeting should be sent a copy of the notice. It would be helpful to members of the public if similar arrangements could be made for publicising any modifications to the Draft Map which the surveying authority determine to make.

Although it was suggested in Circular No. 53/52 that it might be helpful if authorities who still have to publish Draft Maps were to arrange for the provisions of Section 29 to be on view with the maps, maps are being displayed in some areas without any explanation. People inspecting the maps may not always be conversant with the provisions of the Act and it is hoped that surveying authorities will ensure that where a map is displayed, a brief explanation of its purpose, of the rights of landowners under Section 29(2) and of the objection procedure, is also exhibited.

The Minister has on several occasions been asked for guidance as to who would be the most suitable person for appointment to hear objections. While he does not wish to urge any particular course on surveying authorities, he thinks it may be of assistance to those who have not yet made their appointments to know of the various arrangements which have already been made. Those of which the Minister is aware, all of which seem to be satisfactory, include the appointment both of members of committees of the county councils; e.g. the Roads and Bridges Committee, and of independent persons, for example the former Clerk and a retired barrister. The County Councils Association have suggested in the light of experience that as the parties to the Hearing are often represented by lawyers, there is some advantage in appointing people who have legal experience or who are accustomed to presiding at Magistrates' Courts.

The Minister is sure that surveying authorities will so conduct their Hearings that all objectors feel that they have had a full and satisfactory opportunity to make their case. A friendly and helpful attitude on the part of the person holding the Hearing can be combined with sufficient formality to ensure that all the points are given due consideration. The Minister also hopes that authorities will do their best to arrange Hearings so that all concerned can attend. Where difficulty arises because witnesses cannot be present, there is nothing to preclude the surveying authority from considering written evidence; it is for them to decide how much weight to attach to any of it.

The Minister understands that some authorities who are publishing their Draft Maps in parts are having difficulty in dealing with objections and representations about paths which cross from one part to another. A simple solution which has been suggested is to allow the production of evidence relating to the whole length of the path, including such part of it as is outside the Draft Map under review, since such evidence is clearly relevant to the length of path under discussion and should be treated as admissible.

Representations or objections to the effect that a way shown on a Draft Map as a "bridleway" is in fact a "road used as a public path", or vice versa, have sometimes been made, presumably with a view to establishing the existence or absence of public rights other than on foot or on horseback; and on occasions the view has been expressed that, the provisions of Section 27 (6) and Section 32 (4) are conflicting. The Minister thinks that the following comments might be helpful; it will be understood that any question on the interpretation of the Act is a matter for the Courts.

The survey provisions of the Act are only directed to establishing the existence of such rights of way as are proper to footpaths and bridleways, and are not intended to settle the question whether the public have any other rights over such ways (e.g. a right of way for wheeled traffic). The surveying authorities are also required to show any way which in their opinion was 'a road used as a public path', that is to say a highway which is used mainly but not entirely for walking or riding (e.g. a Green Way such as the Berkshire Ridgeway). Section 27 (6) gives a legal definition of both a 'bridleway' and a 'road used as a public path' but whether a way is shown as a 'bridleway' or as a 'road used as a public path' the survey will only determine (in the words of Section 32 (4)) 'that the public had thereover a right of way on foot and a right of way on horseback or leading a horse'. It has been suggested in some quarters that a Definitive Map showing a way as a 'road used as a public path' would provide prima facie evidence on the question of rights other than on foot or on horseback, but it is difficult to see that a Court would accept such

evidence in the face of the specific provision of Section 32 (4) that 'this paragraph shall be without prejudice to any question whether the public had any right of way other than the rights aforesaid'.

Enquiries have been made about the size of Definitive Maps. As surveying authorities will be aware, Section 32 (3) provides that copies of the Definitive Map and Statement shall be supplied to the Minister and they were asked, in paragraph 9 of Circular 91, for two copies. The maps supplied should be of a convenient size for storage and surveying authorities should ensure that the copies are not in units larger than two 2½" sheets (if the minimum scale prescribed by the Regulations is used), or four 6" sheets (if the larger scale is used).

County Borough Councils who may decide under Section 35 (2) of the Act to adopt the survey provisions are asked to let the Minister know as soon as they have passed the necessary resolution so that he may arrange for copies of any relevant circulars and other documents to be supplied to them. For the same reason any county borough councils who have already adopted the survey provisions and have not yet notified the Minister, are asked to do so now. In view of the provisions of subsection (5) (c) of Section 35 it would be of assistance if, when notifying the Minister, Councils would give the date of their resolution.

I am, Sir,

Your obedient Servant,

E. H. T. WILTSHIRE.

CIRCULAR 44/1968

Circular 44/68 (Ministry of Housing and Local Government)

Circular 37/68 (Welsh Office)

2nd August 1968

Countryside Act 1968

[Only paragraphs 74-78 included here.]

Schedule 3

Part II : Revision of Maps and Statements

74. Surveying authorities are asked to include in the notice of the preparation of the draft revision map (subsection 4(1)) the reference numbers of any public paths or roads used as public paths deleted from the definitive map as a result of the consideration of any new evidence, or of evidence not previously considered, showing that there was no public right of way over land shown on the map as a public path or as a road used as a public path.

Part III: Roads used as Public Paths

75. Surveying authorities are asked to take account of the following points when considering the reclassification of roads used as public paths.

76. The intention of the special review is to establish in the first instance what public rights exist over these roads. It should be borne in mind that Road Traffic Regulation Orders may subsequently be made

restricting traffic on the roads and the fact that a road may not be suitable for all traffic need not deter the authority from an initial classification as a "byway open to all traffic".

77. Consultation with neighbouring authorities is advisable where roads cross boundaries to ensure that they are treated similarly. Surveying authorities are also advised to consult any other local interests which may be affected before they make any proposals, and also the following national bodies.

The Auto-cycle Union

The Automobile Association

The British Horse Society

The British Motor Cyclists Federation

The Commons, Open Spaces and Footpaths Preservation Society

The Country Landowners' Association

The Cyclists' Touring Club

The National Farmers' Union

The Ramblers' Association

The Royal Automobile Club

78. Ministers hope that the special review will be begun as soon as possible and that it will be completed in three years.

CIRCULAR 22/1970

Circular 22/70 (Ministry of Housing and Local Government)

Circular 32/70 (Welsh Office)

19th May 1970

Sir,

The National Parks and Access to the Countryside Act 1949

The Countryside Act 1968

The National Parks and Access to the Countryside (Amendment) Regulations 1970

1. We are directed by the Minister of Housing and Local Government and the Secretary of State for Wales to enclose for the information of the Council a copy of the National Parks and Access to the Countryside (Amendment) Regulations 1970 which come into operation on 26th May 1970.

2. The regulations replace regulation 5 of the National Parks and Access to the Countryside Regulations 1950, as amended. The provisions of that regulation, providing alternative forms of notation for rights of way maps under Part IV of the National Parks and Access to the Countryside Act 1949, to facilitate their reproduction in monochrome, are repeated with an amendment to provide forms of notation as respects byways open to all traffic. A byway open to all traffic is one of 3 descriptions under which roads used as a public path are to be reclassified in reviews of rights of way maps carried out under Part IV of the Act of 1949, in accordance with the provisions of Schedule 3 to the Countryside Act 1968.

3. Since a road used as a public path and a byway open to all traffic will not be shown on the same rights of way map, the same forms of notation are used for both. It is important, however, in order to avoid the possibility of confusion arising from familiarity with the forms of notation for a road used as a public path, that a map which shows a byway open to all traffic should contain a key to the notation used thereon.
4. The symbols CRF or CRB have been used on some survey maps alongside the notation for roads used as public paths. They will no longer apply where reclassification is to a footpath or bridleway but if desired the letters CR may be retained along the notation for a byway open to all traffic.

Revision of maps and statements

5. In Part I of Schedule 3 of the Countryside Act 1968, an amendment was made to section 33 of the National Parks and Access to the Countryside Act 1949 in order to enable mistakes which had been made in preparing a definitive map to be corrected on review. Under that provision the matters to which a local authority must have regard in carrying out a review include any new evidence-it must not be evidence previously considered. The evidence must show that there was no public right of way over land shown on the map as a public path, or as a road used as a public path, at the time the way was recorded, or that any other particulars in the map or statement were not correctly recorded. (Such evidence must have been discovered by the authority within the period laid down, ie, between the relevant date of the earliest definitive map or the last date of review and the date of the current review).
6. In considering what action, if any, should be taken on the review in the light of any new evidence, local authorities should consider carefully the nature of the evidence. In the Ministers' view, the only sort of evidence to which the local authorities can have regard to correct a mistake is that which shows conclusively that there was no public right of way over the land shown on the map as a public path, or that any other particulars in the map or statement are not as shown. Where the evidence is merely that of witnesses asserting that there was no right of way, this would not be sufficient to justify the deletion of the right of way and no action should be taken by the local authority. Such evidence would have been considered at the previous stage of map making. If no such evidence was then considered, and there is no valid reason why it was not then produced, it cannot amount to the new evidence now required. Deletion would be justified only if the new evidence satisfied the local authority that they had misconstrued the original evidence and, on a proper view of the original evidence, ought to have decided that no right of way existed; for example, evidence such as that given in *Morgan v. Hertfordshire County Council* ((1965) LGR 456). There is no obligation on local authorities to try and supplement any evidence which is put before them with a view to 'discovering' conclusive evidence.

Advertisement of public path information

7. The Ministers' attention has been drawn to difficulties experienced by members of the public wishing to obtain information about public paths. One of the main purposes of the survey of public rights of way was to record the position of existing public rights of way so that the public could be aware of the paths available to them. Although copies of definitive maps are held in the offices of surveying authorities and the district council offices of the areas concerned, many people are not able to visit these places during normal office hours.
8. Local authorities are reminded therefore of the need to make this information accessible to the public. This could be done for example by displaying maps with public paths marked on them outside council offices, or in suitable office windows and by making similar maps, or copies of definitive maps if mechanical copying is practicable, readily available in public libraries.

We are, Sir, your obedient Servants,

B TAYLOR, Assistant Secretary.

J L PALMER, Assistant Secretary.

The Clerk of the Authority

County Councils

County Borough Councils

other Local Authorities (without the document referred to in paragraph 1 above), England and Wales

London Borough Councils

CIRCULAR 123/1977

Circular 123/77 (Department of the Environment)

Circular 187/77 (Welsh Office)

12 December 1977

Sir,

Roads used as Public Paths

1. We are directed by the Secretary of State for the Environment and the Secretary of State for Wales to refer to the reclassification of "roads used as public paths" (RUPPs) in the special review under Part III of Schedule 3 to the Countryside Act 1968 and to the Court of Appeal's decision in the case of Hood v the Secretary of State for the Environment. The Court of Appeal held that, in the absence of new evidence, or evidence not previously considered by the surveying authority (described as "new evidence" in the sub-paragraphs below), a RUPP could not be reclassified at a special review as a footpath because of the conclusive presumption contained in Section 32(4)(b) of the National Parks and Access to the Countryside Act 1949 that there are equestrian rights over a RUPP.

2. This Circular explains how, in the view of the Secretaries of State, the decision of the Court of Appeal affects the special review.

3. The decision has no effect on any reclassification of a RUPP (or any objection to such a reclassification) which is based on "new evidence", within the terms of Section 33 of the 1949 Act as amended by Part I of Schedule 3 to the 1968 Act.

4. Where there is no claim to "new evidence" the Secretaries of State are advised that in their consideration of objections they could not uphold the council's reclassification from a RUPP to a footpath in circumstances other than those described in sub-paragraph (b)(ii) below. It therefore appears to them that the effect upon their consideration of objections is as follows:

(a) If a council has reclassified a RUPP as a footpath and an objector claims that it should be shown as a bridleway, the Secretaries of State must (in the absence of "new evidence") direct the council to reclassify it as a bridleway.

(b) (i) If a council has reclassified a RUPP as a footpath and an objector claims that it should be shown as a byway open to all traffic, then, provided that the tests laid down in paragraph 10 of Part III of Schedule 3 to the 1968 Act are satisfied, the Secretaries of State must (in the absence of "new evidence") direct the Council to reclassify it as a byway open to all traffic.

(ii) But if these tests are not satisfied, then, since the Secretaries of State take the view that they may only consider and determine the objection before them, and have no power to direct any reclassification other than that sought in that objection, the way must remain on the map reclassified as a footpath.

(c) If a council has reclassified a RUPP as a byway open to all traffic or a bridleway and there is an objection that it should have been reclassified as a footpath, the Secretaries of State cannot (in the absence of "new evidence") give effect to that objection.

5. County councils who have not yet published a draft map for the special review are asked to take account of the Court's decision when reclassifying RUPPs, and in publishing the draft map to make clear

the classes of objection to which the Secretaries of State consider themselves now unable to give effect, as mentioned above. Where a draft map has been published, the Secretaries of State will similarly be notifying those who have made objections which fall into these classes and are not clearly based on "new evidence".

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. It may also happen in the future where for instance a county council, otherwise than as the result of "new evidence", reclassifies a RUPP as a footpath and no objection is made, (or, if one is, the Secretary of State has not given effect to it). 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 I of Schedule 3 to the 1968 Act (amendment to Section 33 of the 1949 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 maps resulting from the special review, put some suitable note against such footpaths in order that the general public may be aware of the position.

7. 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.

We are, Sir, your obedient Servants,

MISS J E COLLINS, Senior Principal

B H EVANS, Assistant Secretary
