

POLICY 005

Adopted on 25th November 2016

RECORDING RIGHTS OF WAY (LOST WAYS OR FORGOTTEN WAYS)

PREAMBLE

The network of public rights of way in England is a valuable resource for all people to use for work and leisure. PNFS, and its predecessor organisation the Peak District and Northern Counties Footpath Preservation Society, is an important agency for legally recording, protecting and defending rights of way in the PNFS Area.

The first 'object' in the Constitution of the PNFS is 'creating and preserving open spaces, public access and rights of way'.

Prior to the creation of the definitive maps under the provisions of the National Parks and Access to the Countryside Act 1949 the Society was active in protecting rights of way. This was no easy matter as Moon and Ward noted in their 1913 booklet 'Ramblers and the Law'.

The law is full of pitfalls and intricacies, and under present conditions an actual right-of-way is difficult to acquire, and, when acquired, more difficult to vindicate and retain. Further, the individual is subjected to considerable vexations whilst allowed to exercise his right.

Since the enactment of the 1949 Act matters have been easier because the preparation of definitive maps and statements provides conclusive evidence of the existence of public right of way. However it does not follow that a route that is not shown on these documents is not a public right of way. The extent to which surveying authorities accurately and comprehensively recorded all the existing rights of way varied enormously. Many rights of way were missed off the definitive maps, and while some have been added through revisions of the definitive map, many still remain *unrecorded* and may be 'lost' because they are not on the definitive map.

ISSUES WITH UNRECORDED RIGHTS OF WAY:

If the public rights on a path are not recorded on the definitive map, the paths often cannot be used by the public, legislation cannot be used by highway authorities or the Society to enforce the removal of obstructions or the maintenance of the surfaces, and persuading developers to respect such rights of way is very difficult. It is therefore very important that rights are recorded.

EXTINGUISHMENT OF UNRECORDED RIGHTS AT THE 'CUT-OFF DATE' 2026:

In the CROW Act 200 Part II, s53 specified a 'cut-off date' as either 1st January 2026 or a date up to five years later, when all rights of way over footpaths and bridleways (outside Inner London) which existed before 1949 and *which have not been recorded on definitive maps will be extinguished*. There will be exemptions for paths in certain circumstances, and there is power for the Secretary of State to make exceptions for ways which are the subject of modification orders or applications for orders at the 'cut-off date'. There is also power to extend the date indefinitely in areas where the definitive map provisions did not apply when

the legislation was first introduced in 1949 (mainly areas which were county boroughs prior to 1974). After the 'cut-off date' it will no longer be possible to record additional historic ways on definitive maps as byways open to all traffic, although unrecorded vehicular rights will not be extinguished.

USE OF UNRECORDED RIGHTS OF WAY:

Some historic rights of way have not been used within living memory, because they are not evident on the ground or because they are obstructed. Some, however, are in use now.

OVERALL PRINCIPLES:

PNFS asserts that the public has a right to use footpaths and bridleways which are historic public rights of way, whether or not they have been recorded on the definitive map.

PNFS will strive, within its available resources, to support the recording rights of way which are not on the definitive map.

PNFS wishes to support its members in submitting definitive map modification order applications to the relevant surveying authority before the cut-off date.

PNFS will collaborate with other societies which share the same aim to record rights of way that are not on the definitive map.

Aim: To ensure that (within the PNFS area) as many applications as possible for modification orders to record historic public rights of way, which are not currently on the definitive map, are submitted to the relevant surveying authorities before the cut-off date in 2026.

RECORDING RIGHTS OF WAY: WHAT IS INVOLVED?

There are three stages to recording a right of way not on the definitive map:

1. Identifying footpaths and bridleways which are potentially unrecorded rights of way.
2. Researching the evidence which will support a claim to add the path to the definitive map record, including evidence of use where appropriate.
3. Making an application using the appropriate processes and forms.

Each of these stages in the process can be time-consuming and requires some knowledge and expertise.

1. Identifying potential paths: this involves a systematic survey of current and previous editions of ordnance survey maps (and other maps) relating to a parish, or an area of parishes.
2. Researching the evidence: this will involve both on-line research and visits to both local and national archives to establish the historical record, and, where relevant, identifying users and asking them to complete forms describing their use.
3. Making an application: the application map and statement which will describe the evidence for the right of way, what the evidence shows and its relevance, and where the evidence is located must be prepared. The form to be used is set out in the Regulations

Furthermore, there is the possibility of making an appeal if the order is not made or is made but receives objections, and attending an inquiry.

The whole process can take months even years.

CONTEXT:

The Society recognises:

- that it has limited resources to pursue the aims identified above. The Society depends on volunteers and there are a limited number of people available to spend the time needed.
- that the Society's area is considerable, covering 35 Highway Authorities and over 1,400 parishes.
- that the Society's Footpath Inspectors may be best placed to identify potential unrecorded rights of way in their parishes.
- that other societies share our aims to restore the record, notably the Open Spaces Society and The Ramblers, and also local footpath societies.

WHAT THE SOCIETY WILL DO:

1. Set-up a Recording Lost Ways (RLW) working group of interested members, including at least one Trustee of the Society, which will oversee, and organise, the actions listed below and report regularly to the Trustees on actions taken and progress made.
2. Allocate a budget to be available to RLW working group to pursue its aims.
3. Actively publicise this policy to members and affiliated groups, including on the PNFS website.
4. Modify the 'job specification' for inspectors to include identifying unrecorded paths in their allocated parishes.
5. Publicise actions being taken to record lost ways by PNFS to members (through Signpost and HYMs and AGMs) and to the public at large.
6. If there is sufficient demand, run training event(s) for members and/or affiliated groups.

Specifically, relating to each of the stages noted above, the Society may undertake the following:

1. Identifying unrecorded rights of way

- Publicise the need for map surveys
- Encourage PNFS members - and inspectors in particular - to identify unrecorded rights of way and, where relevant, path users.
- Make contact with other societies, including affiliated groups, who may be interested in identifying unrecorded rights of way.
- Share information with other societies

2. Researching the evidence

- Produce a short guide to researching unrecorded rights of way
- Provide advice to any PNFS member undertaking research
- Use funds to hire a researcher at the National Archives
- Pay expenses for visits to local and national archives

3. Making an application

- Produce a template for applications for PNFS members to use
- Provide advice on making applications, normally to be made in the name of the Society
- In selected cases, the RLW working group on behalf of PNFS may make an application
- Support appeals when PNFS believes there is a sound case for a change to the definitive map.

APPENDIX 1 LEGISLATION**Extinguishment of unrecorded rights of way.**

- (1) Subsection (2) applies to a highway if—
 - (a) it was on 1st January 1949 a footpath or a bridleway, is on the cut-off date (in either case) a footpath or a bridleway, and between those dates has not been a highway of any other description,
 - (b) it is not on the cut-off date shown in a definitive map and statement as a highway of any description, and
 - (c) it is not on the cut-off date an excepted highway, as defined by section 54(1).
- (2) All public rights of way over a highway to which this subsection applies shall be extinguished immediately after the cut-off date.
- (3) Where a public right of way created before 1949—
 - (a) falls within subsection (4) on the cut-off date, and
 - (b) is not on that date an excepted right of way, as defined by section 54(5), that right of way shall be extinguished immediately after the cut-off date.
- (4) A public right of way falls within this subsection if it is—
 - (a) a public right of way on horseback, leading a horse or for vehicles over a bridleway, restricted byway or byway open to all traffic which is shown in a definitive map and statement as a footpath;
 - (b) a right for the public to drive animals of any description along a bridleway, restricted byway or byway open to all traffic which is shown in a definitive map and statement as a footpath;
 - (c) a public right of way for vehicles over a restricted byway or byway open to all traffic which is shown in a definitive map and statement as a bridleway; or
 - (d) a public right of way for mechanically propelled vehicles over a byway open to all traffic which is shown in a definitive map and statement as a restricted byway.
- (5) Where by virtue of subsection (3) a highway ceases to be a bridleway, the right of way created over it by section 30 of the Countryside Act 1968 (riding of pedal cycles on bridleways) is also extinguished.
- (6) In determining—
 - (a) for the purposes of subsection (1) whether any part of a highway was on 1st January 1949 a footpath or bridleway, or
 - (b) for the purposes of subsection (3) whether a public right of way over any part of a highway was created before 1st January 1949, any diversion, widening or extension of the highway on or after that date (and not later than the cut-off date) is to be treated as having occurred before 1st January 1949.
- (7) Where a way shown on the cut-off date in a definitive map and statement has at any time been diverted, widened or extended, it is to be treated for the purposes of subsections (1) to (5) as shown as so diverted, widened or extended, whether or not it is so shown.
- (8) In this section—
 - “cut-off date” has the meaning given in section 56, and
 - “mechanically propelled vehicle” does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.