



## Some background to the law on public rights of way.

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This is short background to the law on public rights of way. Its purpose is to provide a brief introduction to the law as it is likely to be encountered in the work of the JLAF and further clarification should be sought where necessary. It is written with relevance to the JLAF area and thus may not be transferable to other areas. Errors and omissions excepted. Please contact the JLAF at [secretary@jlaf.org.uk](mailto:secretary@jlaf.org.uk) with any suggestions for addition or amendment.

### Introduction.

Footpaths, bridleways and byways reflect routes used for many centuries, not only by mineworkers, millers, farmers and the like, but also by the public at large. However, many gradually fell into disuse, or were blocked, and particularly from 1949 onwards, a series of Government Acts and cases in the High Court, have made substantial changes to the law regarding public rights of way. The following are some of the Acts of significance to public rights of way work and are shown with some of their provisions:

- The **National Parks and Access to the Countryside Act 1949** introduced procedures for recording the public's rights on definitive maps. It also introduced procedures whereby changes to the system could be considered at public inquiries rather than in the law courts and introduced powers to create long distance routes.
- The **Highways Act 1959** (now largely incorporated into the Highways Act 1980). This introduced new procedures for enforcing a highway authority's duty to keep paths in good repair.
- The **Highways Act 1980**. This introduced Public Path Orders, new arrangements for maintenance and enforcement of highways. It also included provisions that defined in statute the dedication of public rights of way, for example by agreement or through 20 years of public use as of right.
- The **Countryside Act 1968**. This revised the arrangements for updating definitive maps, gave cyclists the right to ride on bridleways, and required paths to be signposted.
- The **Rights of Way Act 1990**. This amended duties and powers with regard to ploughing or disturbing the surface of public rights of way.
- The **Countryside and Rights of Way Act 2000**. This is the Act that has enabled our Forum to be created. It introduces a number of important changes, which I will cover in a separate background paper.

### How are the various classes of public rights of way defined?

**Footpath (FP)**. This means a highway over which the public have a right of way on foot only, (not being a footway).

**Bridleway (BW)**. This is a highway over which the public has the following (but no other) rights of way: that is a right of way on foot and a right of way on horseback or leading a horse. Since the 1968 Act, the public have a right of way to ride bicycles on bridleways provided they give way to walkers and horse-riders.

**Byway Open to All Traffic (BOAT)**. This is a highway over which the public have a right of way for vehicles and all other kinds of traffic, but is used by the public mainly for the purpose for which footpaths and bridleways are used.

**Road Used as a Public Path (RUPP)**. This means a highway used by the public mainly for the purposes for which bridleways are used.

**Note:**

1. Footway means a way in a highway that also comprises a carriageway, being a way over which the public has a right of way on foot only. Since the Highway Act 1835, Section 72, it is an offence to ride a bicycle on a footway (i.e. a pavement within a carriageway).
2. In England and Wales, once a highway has been created, it exists in perpetuity (i.e. once a highway always a highway). It does not disappear through non-use or neglect, but can be deleted by statutory provision.
3. Dogs. The entitlement to take a dog on a public right of way is confined to the line of the path, and only exists while the dog is accompanied by its owner or keeper.

**How can public rights of way be altered, diverted or closed?**

The 1949 Act required every county council to carry out a survey of its area, and prepare a map showing all public footpaths, bridleways or roads used as public paths. The showing of a route on a "definitive map and definitive statement" was conclusive evidence that it was a public right of way at the date the map and statement were prepared, the "relevant date".

Under the terms of the 1949 Act, there was to be a five-yearly rolling review of definitive maps. However, by the late 1970's, some thousands of objections to proposed routes had not been resolved, and the Wildlife and Countryside Act 1981 introduced a system of continuous amendments to the existing "definitive maps and statements" by Definitive Map Modification Orders.

Definitive Map Modification Orders are the method by which changes to definitive maps and statements are made today. These orders can add routes to a definitive map and statement, remove routes from the definitive map and statement or change the status of a route shown on the definitive map and statement.

Definitive Map Orders are made on the basis of evidence. This evidence can be of two main types, documentary evidence and user evidence. Documentary evidence can include Inclosure Awards, Tithe and Finance Act records, Railway and Canal Records, Ordnance Survey Maps and Estate maps. User evidence is used to demonstrate dedication of a path by a landowner, demonstrated by the use of a route by the public. The legal basis upon which user evidence is used is either common law, or that which arises under the Highways Act 1980, based on 20 years of uninterrupted use by the public. There are a number of tests in the determination of orders that are out of the scope of this paper.

These definitive map modification orders are distinct from public path orders that alter the route on the ground, (as opposed to how the route is recorded on the definitive map and statement). Public Path Orders under the Highways Act 1980 or the Town and Country Planning Act 1990 include public path creation orders, public path diversion orders and public path extinguishment orders.

The Countryside and Rights of Way Act has made a number of changes to the laws on access and rights of way that are considered in a separate paper.

Alun Morgan, JLAF Chair, August 2003.