

Changing the status of Rights of Way

Map Modification, Public Path & Traffic Regulation Orders (England & Wales)

THIS BRIEFING COVERS: Optimising opportunities for cycling and the relevant legislation. (Please note that this briefing is intended a general guidance only. It is not legal advice).

HEADLINE MESSAGE

- The Rights of Way (RoW) network in England and Wales is extremely fragmented, and there is an urgent need to fill in the gaps to make it more attractive for healthy and enjoyable outdoor activities such as cycling. This can be done through a legal process involving 'Orders'.

KEY FACTS

- Only around a fifth of the public rights of way in England and Wales is available to cyclists.
- Statutory Orders can be used to expand the network of paths legally available for cycling in the countryside. Different types of Orders can: modify an authority's definitive map and statement of public rights of way in the case of errors or omissions; create, extinguish or divert rights of way; or regulate or prohibit cycling or motor traffic on the highway.

Cycling UK VIEW

- **Map Modification Orders (MMOs)**
 - Highway authorities should make resources available to ensure that the definitive map¹ accurately represents the full bridleway and byway network before the 'cut off date' of 1st January 2026.²
 - Cycling UK will normally oppose moves to downgrade or delete bridleways and byways, and support upgrading or creating them.
 - As the current system is overly resource-intensive, the Government and its agencies should take steps to develop and implement more effective ways of making and confirming Orders.
- **Public Path Orders (PPOs)**
 - The needs of residents, landowners and businesses should be sympathetically considered whenever they want to make reasonable diversions around residential properties or farm buildings, or alter the line of a path so that it goes round the edge of field (headland), rather than across it (cross field).
 - If, however, the diversion means that cyclists would suffer a loss of amenity, or usability (e.g. longer and/or steeper routes, poorer surfaces etc.), Cycling UK is unlikely to support the proposal.
 - Cycling UK will, however, normally oppose any proposed downgrades (e.g. downgrading a bridleway to a footpath that cyclists can no longer use).
- **Traffic Regulation Orders (TROs)**
 - Wherever possible, Cycling UK will liaise with highway authorities to seek alternative solutions to TROs on byways, bridleways or unsurfaced roads.
 - Cycling UK will normally oppose any regular renewal of a temporary TRO, because remedies to deal with the problem in question should be the priority.





BACKGROUND INFORMATION

Cyclists have access to only around a fifth of the RoW network in England and Wales³, but Statutory Orders could be used to create new ways for cycling, to legalise existing use or to upgrade footpaths. This would help make a much more coherent and attractive network for cycling.

Rights of Way - Definitions:

Footpath: open to walkers only

Bridleway: open to walkers, horse riders and cyclists

Restricted byway: open to walkers, cyclists, horse riders and horse drawn vehicles

Byway Open to All Traffic (BOAT): open to walkers, cyclists, horse riders, horse-drawn vehicles and motor vehicles

1. Types of order

a. Map Modification Orders

- Highway authorities (HAs) have a duty to modify their definitive maps and statements when they become aware of evidence of errors or omissions. For this they use section 53 (s53) of the *Wildlife & Countryside Act 1981*.⁴
- Modifying the definitive map and statement is extremely time-consuming, however, and most authorities have a considerable backlog.
- Prescribed organisations, including Cycling UK, have a right to comment or object, and this may lead to a Public Inquiry if the matter cannot be resolved beforehand.
- If a path has been used, unchallenged, for (normally) 20 years and there is good evidence of this, s31 of *Highways Act 1980* makes provisions for it to be recorded on the definitive map as a public right way ('presumed dedication').
- Once planning consent has been given for a development over a bridleway, the planning authority may extinguish or divert the bridleway through s257 of the *Town & Country Planning Act 1971* (T&CPA).

b. Public Path Orders

- A householder, landowner or other business may seek to divert or extinguish a public right of way for reasons such as privacy, security, public safety or convenience.
- HAs have a power, but not a duty, to consider such requests using s118 or s119 of the *Highways Act 1980*.
- It is also possible to use s116 which takes the case through the magistrates' court.
- Prescribed organisations, including Cycling UK, have a right to object, and most authorities now request applicants to consult with users to gain agreement before the order is made.

c. Traffic Regulation Orders

- TROs are created under the *Road Traffic Regulation Act 1984*. HAs use them to regulate or prohibit cycle or other use on any highway, including bridleways and restricted byways. For example, an authority may want to close a bridleway because of a bridge defect; or deal with the inappropriate use of a right of way by motor vehicles by prohibiting them altogether.
- TROs can be temporary (six months maximum, but renewable) or permanent.
- Authorities must consult organisations representing affected users and publish the Orders in local paper(s) to give people the chance to raise objections.
- An Order, giving reasons, plus a map with alternative routes must be available.
- The Order is only viable if notices are posted on site to alert users.



Note: TROs, or regularly renewing a temporary TRO, should not substitute for practical action to tackle the problem itself. For example, it is better to negotiate an alternative, interim route with the landowner whilst a bridge defect along a bridleway is being remedied, than to close the route by an Order because of it.

Byways Open to All Traffic (BOATs) and Restricted Byways

- BOATs and restricted byways have more protection than bridleways by law, in that they may not be ploughed. This helps protect hedgerows and associated wildlife.
- The establishment of 'new' BOATs has been severely curtailed by the provisions of s67 of the *Natural Environment & Rural Communities Act (NERC) 2006*.
- Following guidance from the Department of the Environment (DEFRA), s68 of NERC allows a restricted byway to be claimed following evidence of 20 years of uncontested cycle use, using s31 *Highways Action 1980* provisions (see 'Map Modification Orders' above).

2. Consultation

- When proposing Map Modification or Public Path Orders, an authority must notify Cycling UK specifically. In the case of TROs, they should consult with the representatives of users likely to be affected, which in most cases includes Cycling UK.
- Members of the public and, of course, path users, also have the right to comment or object.

ORDERS: GETTING THE BEST FOR CYCLING	
1	Check local papers: not all authorities assiduously inform users about Orders, so check local papers for the statutory notices.
2	Look out for proposed bridleway downgrades/extinguishments: there is continuing pressure from landowners to downgrade or extinguish bridleways, so keep an eye out for MMOs that will have this effect, if confirmed.
3	Seek expert advice: if you want to object to an Order, let Cycling UK's Campaigns Department and other user groups know before proceeding. This is vital for many reasons, <i>not least for advice on potential costs</i> .
4	Work with other groups/supporters: when objecting to an Order, work with like-minded user groups. You might like to consider appointing a single objector to reduce time commitments for everyone.
5	Make a joint written representation: costs can be awarded against anyone if the Order is decided at a hearing or inquiry. However, no-one can apply for costs if the case is decided by written representation. All the objectors have done is write a letter.

RELEVANT LEGISLATION (See www.legislation.gov.uk for text of Acts (search for title))

- **Wildlife & Countryside Act 1981, s53:** obliges highway authorities to modify the definitive map and statement when they become aware of evidence that there are errors or omissions.
- **Town & Country Planning Act 1990, s257:** gives authorities the power to stop up or divert footpaths and bridleways, if it is necessary to implement a planning permission given by the council.

- **Highways Act 1980:**
 - **s31:** provides for the creation of public rights of way on the basis of 20 years of unchallenged user evidence ('presumed dedication').
 - **s116, 118 and 119:** provide for the extinguishment or stopping up of a highway because it is not needed for public use, or for diversions in the interests of the owner, lessee or occupier. S 118A & 119A cover the stopping up or diversion of footpaths or bridleways that cross railways. S116 allows for stoppings up/diversions to go through the magistrates' court.
- **Road Traffic Regulation Act 1984:** provides authorities with powers to regulate or restrict traffic on highways, in the interest of safety.
- **Natural Environment and Rural Communities Act 2006:**
 - **s67** restricts the ability to create new rights of way (e.g. BOATs) for mechanically propelled vehicles (MPVs). Evidence of use of a way by MPVs for a period of time will not of itself give rise to a public right of way for such vehicles.
 - **s68** allows a restricted byway to be claimed following evidence of 20 years of uncontested cycle use, using s31 of the *Highways Act* (see above).

FURTHER READING/WEBSITES

- Cycling UK briefings on off-road access. www.cyclinguk.org/campaignsbriefings
- *Byway and Bridleway Trust*. www.bbtrust.org.uk/
- *Rights of Way. A Guide to Law & Practice*. 4th Edition (the 'Blue Book'). Riddall & Trevellyan (Ramblers' Association / Open Spaces Society, May 2007).
- *Guidance on procedures for considering objections to the Definitive Map and Public Path Orders in England*. The Planning Inspectorate. May 2015.
- *An Introduction to Highway Law*. Michael Orlik. (Shaw and Sons, 2007)
- *Guide to definitive maps and changes to public rights of way* (Natural England, 2008) www.gov.uk/government/uploads/system/uploads/attachment_data/file/414670/definitive-map-guide.pdf
- The Ramblers' RoW and access pages: www.ramblers.org.uk
- *Recording a Right of Way* (2011); *Diversion of Bridleways*. BHS. <http://tinyurl.com/mqtmwon>

¹ The definitive map is a statutory document that must be produced and kept up to date by every county council or unitary authority (except Inner London Boroughs). Every single public right of way in their area should be recorded on it.

² *The Countryside and Rights of Way Act 2000*, s53 and s56 set a cut-off date, 1st January 2026, beyond which any pre-1949 public rights of way not recorded on the definitive map (see note 1) were to be extinguished. The cut-off date also applies to unrecorded higher rights on definitive footpaths, bridleways or restricted byways. Originally, the Government funded Natural England (then the Countryside Agency) to carry out research, identify and record rights of way that were missing from the definitive map to make sure that they were not lost for ever. However, the work was so labour intensive and complex, that the project, 'Discovering Lost Ways' (DLW) was abandoned in 2008. An alternative approach was outlined in a 2010 report *Stepping Forward*, written by the Stakeholder Working Group on Unrecorded Rights of Way, which Natural England established. It recommends a package of legal and procedural changes requiring detailed implementation by Government with the aim of simplifying the research and recording process. <http://publications.naturalengland.org.uk/publication/40012>. The 2026 cut-off date and its implications remain contentious, see for example: www.ramblers.org.uk/campaign-with-us/dont-lose-your-way.aspx

³ Cyclists are allowed to use bridleways, restricted byways and byways open to all traffic (BOATs). Until recently, Natural England (NE) published the composition of the RoW network on their website, but since a new version of the site was launched, these figures are no longer there. Cycling UK has contacted NE about this, and will update this briefing as soon as we have received a response.

⁴ See note 1