



Registration of historic rights of way and of the benefits of extending the cut-off date for their registration

Grand Committee Short Debate – 15.30 – Tuesday 02 April 2019

Parliamentary Briefing – March 2019

1. Background

The rights of way network is one of our nation's greatest assets: it connects people to nature and our rural environment and describes how our ancestors interacted with, and enjoyed, the landscape over centuries.

From 1 January 2026, it will no longer be possible to add rights of way to the legal record (the definitive map) in England and Wales on the basis of historical evidence. Unrecorded routes, many of which go back centuries, need to be identified and claimed so they can be secured for generations to come. These unrecorded routes exist in law; many exist on the ground and are in current use, whilst others would provide useful additional routes and linkages to the existing network. All are in danger of having their rights permanently extinguished in 2026.

We are concerned that this rich heritage is at risk unless the cut-off date for claiming historical rights of way is extended from 2026 to 2031, as provided by section 56 of the Countryside and Rights of Way Act 2000 (the CROW Act).

2. About our charities

We are a group of charities, representing over 200,000 members, working to promote access to the countryside and our unique and precious rights of way network:

- **Ramblers** - As Britain's largest walking charity, the Ramblers helps everyone to enjoy the freedom of the outdoors on foot. We are committed to supporting Britain's 9 million walkers and to protecting access to the places people love to walk. Our volunteers help make this possible: from leading walks and clearing footpaths, to organising local action to protect and expand the infrastructure and places people go walking.
- **The British Horse Society** - As the largest equine charity in the UK, The British Horse Society is dedicated to education, equine welfare, protecting and increasing access to bridleways and equestrian routes, and safety for horse and riders. The Society's thriving and active community of staff and volunteers are committed to improving the lives of horses everywhere.
- **Open Spaces Society** - The Open Spaces Society, founded in 1865, is Britain's oldest national conservation body. It campaigns to protect common land, town and village greens, other

open spaces and public paths throughout England and Wales, and people's rights to enjoy them.

3. History

The Countryside and Rights of Way Act 2000 (CRoW) prescribed a cut-off date of 1 January 2026 for the recording on definitive maps of footpaths and bridleways created before 1949 and provided for the extinguishment of these rights of way if they have not been claimed by the 2026 deadline. This was in order to bring certainty about the extent of the network to all those concerned. Subsequent to CRoW, the Countryside Agency established the "Discovering Lost Ways Project" with significant resource invested to trial a systematic approach to researching unrecorded rights of ways in a number of areas.

Natural England, upon inheriting the Discovering Lost Ways project in 2007, began a review of its effectiveness. This review found that there were fundamental problems with the system for making and processing claims for unrecorded rights of way and concluded that a time limited completion of the definitive map and statement by 2026 was not a practical proposition under existing procedures. The review recommended a fresh look at the whole system. The Discovering Lost Ways project was subsequently wound up having cost £8m and only resulted in the recording of four "lost" routes in one county.

In 2008 Natural England established the "Stakeholder Working Group on Unrecorded Public Rights of Way" (SWG) comprising representatives of local authorities, rights of way user groups and landowning / land management interests. This group, which focused on developing workable reforms to the system, delivered the "Stepping Forward" report in 2010 which contained 32 recommendations.

Five years after the Stepping Forward report, the recommendations were included in the Deregulation Act 2015. However, the provisions of this Act have yet to be enacted and another delay is taking place due to Brexit readiness preparations.

Our charities have been actively involved in both the Discovering Lost Ways project and the SWG. We continue to support thousands of volunteers in identifying lost paths and with making applications for these rights of way to be added to the definitive map.

4. The need for postponement

We believe that the 2026 cut-off date is now untenable. In its original recommendations, the SWG agreed that implementation of the cut-off was an integral part of its package but did not specify that this should be 2026. Indeed, at the time the report was being prepared, when there were still 16 years to pass before 2026, no consideration was given to the fact that a postponement might be necessary. However, circumstances have changed beyond recognition and we now believe that cut-off date should be moved to 2031 for the following reasons:

- a) **Lack of additional resource to assist the voluntary sector.** The Minister at the time of the passage of the CRoW Act pledged in Parliament that the cut-off date would not be introduced "without ensuring that adequate resources to make it possible for all existing paths that can reasonably be found to be found (sic)"¹. Significant resources were put into the Countryside Agency/Natural England *Discovering Lost Ways* project. However, since the

¹ House of Commons, 14 June 2000, Volume 351, Column 953

collapse of that initiative, which had very little concrete outputs, no additional resources have been allocated to this work and the voluntary sector has had to step into the breach unfunded.

- b) **Delay to commencement of the Deregulation Act.** Regulations to exclude historical paths which remain in current use and other specified routes from extinguishment at the cut-off date have been drafted but remain the subject of debate and review. We welcome the care taken to get regulations right — but it has all taken a good deal longer than expected. These regulations – to be enacted at the same time as procedural reform under the Deregulation Act 2015 – will also seek to streamline the application process, lessening the burden on local authorities and others. We understand that the commencement of these provisions is now scheduled for the second half of 2019, but 2020 now seems more probable. This will be over ten years since the SWG published its original recommendations and leaves only five years until the cut-off date.
- c) **Lack of time to review and improve processes.** The original intention was to review the implementation of these provisions in 2015. This is now not possible. The time for the provisions to bed in, be reviewed and then made the subject of any necessary legislative adjustments, well before 2026, is far too short. A delay to the cut-off date will give Defra more time to refine these regulations and ensure they will be effective in protecting useful routes from the cut-off date, especially important given the significant amount of time that the department will be devoting to the new agriculture payments system.
- d) **Local authority resource.** The financial climate for local authorities is vastly different to that which prevailed in 2008 - 2010 when the SWG was preparing its recommendations. We know that local authorities are currently having to allocate the majority of their resources to other statutory duties meaning that it is taking them longer to update their definitive maps and statements resulting in the much-needed recording of these rights of way being deferred. A recent Freedom of Information request (carried out by the Ramblers) found that there are at least 4,400+ applications waiting to be processed on local authority registers in England. As the anticipated benefits to both local authorities and applicants of the new processes have not had the opportunity to materialise it would be appropriate to delay the cut-off to enable applications to be managed under these improved processes.

5. Key facts

- There are 140,000 miles of public rights of way in England and Wales.
- In 2002, the Countryside Agency estimated that there were 20,000 lost ways to be restored to the definitive map in England. The Countryside and Community Research Unit estimated that there are an additional 10,000 miles of unrecorded rights of way to be added to the definitive map, the recording of which would add at least 8.5% to the path network. Some areas (such as Cornwall) have up to 3000 candidate paths to investigate.
- Walkers in the English countryside spend over £6 billion a year, supporting up to 245,000 full time jobs. The economic value of the equestrian sector stands at £4.3 billion of consumer spending across a wide range of goods and services each year.

Contact us

If you are interested in learning more or discussing how we can work together, please contact Jack Cornish at the Ramblers at jack.cornish@ramblers.org.uk