South Pennine Packhorse Trails Trust and the National Federation of Bridleway Associations—Written evidence

Response to the Joint Committee

Note: paragraph numbers below relate to the Joint Committee document

Executive Summary

We question whether it is appropriate to include the clauses relating to public rights of way in a Deregulation Bill, as they add so many new measures to rights of way legislation, rather than simplifying it (e.g. Schedule 6). Where the law is simplified it tends to disadvantage the public, rather than private individuals, by removing their ability to assert their rights.

It is vital to the majority of horseriders in England who rely on using public rights of way for recreation (as well as business and tourism) that any new legislation gets the balance right and does not permanently remove much of their access to the countryside. Unlike the situation for walkers, there are still many areas of the country where a high proportion of the paths used by horseriders are still only recorded as footpaths. They ride on these on the basis that they have always done so and they believe that the routes have a higher status (i.e. once a highway always a highway).

Horseriders have been asking their local authorities to correct these errors ever since first Definitive Maps were published in the early 1970s. However, due to the scale of the task and the lack of resources (and sometimes political will), many local authorities have struggled to make any headway at all.

We appreciate that aim of the Bill is to simplify and speed up the process of correcting the definitive map. But we are not confident that vesting so much power in local authorities (many of whom have under-performed for years) will ultimately be beneficial to the public.

Comments on Call for Evidence

JC1. Our comments relate to the changes to public rights of way legislation: Clauses 12-18 and Schedule 6 of the draft Bill. Our understanding is that these can only be implemented using primary legislation.

JC2. We are concerned that Government will simultaneously use secondary legislation to make other changes to rights of way law, for example, by implementing the cut-off date and using their order-making powers to publish new guidance. There are too many 'unknowns' which could have an impact on the legislation contained in this Bill.

We do not feel that this approach is transparent. By not considering all the issues holistically, the intentions underlying the Stakeholder Working Group's considered package of proposals might be inadvertently subverted in a way that would disadvantage the public.

JC3. The specific changes proposed for public rights of way are claimed to be evidence-based but not all relevant evidence has been considered – in particular, the contribution, impact and cost to public sector bodies and individuals (see the Impact Assessment provided by Defra).

The specific category affected is users of historical higher rights of way (bridleways, restricted byways and byways open to all traffic) where the rights have not been recorded on the definitive map and statement. These higher rights will be extinguished in 2026 unless duly made applications are submitted to the appropriate surveying authority to have the rights recorded.

Below we have identified some risks which might specifically affect access to the countryside for equestrians.

JC4. The draft Bill attempts to achieve a balance but the outcomes are untested and may have a negative impact on both equestrian businesses and on individual members of the public.

JC5. There is no evidence that the draft Bill will benefit equestrian businesses by offsetting regulatory burdens.

JC6. We are very concerned that the new procedures contained in the draft Bill will not work effectively to benefit of all rights of way users. The emphasis on cost-cutting and reduction in claims contained in the Impact Assessment suggests that it may disadvantage equestrians, whose network is acknowledged to be the most incomplete. This does not inspire confidence in the new measures that are being proposed.

JC7i. The Impact Assessment states that 'any changes would affect all equally'. However, 93% of people who access the countryside on horseback are female and it is the bridleway network that is most severely affected in terms of inaccuracies. Therefore we feel the government has a Gender Equality Duty to take this into account.

JC7v. Without prior knowledge of what threshold the guidance prepared by the Secretary of State will require in order for claims to meet the Basic Evidential Test or the Preliminary Assessment, it is impossible to judge whether the legislation will be administered fairly. These are very powerful tools capable of manipulating the evidential weight of historical evidence.

Government has given no assurance that sufficient additional resources will be allocated to allow and encourage local authorities to complete this task competently. Nor has it indicated how it plans to monitor their performance to make sure that they actively protect the rights of the public.

Instead, the Impact Assessment is promoting this as a cost- saving measure. Therefore:

(a) local authorities will find it extremely difficult (if not impossible) to complete the task on the budgets that are currently being allotted to them, and

(b) it is also highly likely that they will be unwilling to accept the future maintenance liability for an increased network of paths (in particular, more bridleways and restricted byways).

JC7vi. The effects on wellbeing and health will be negative if sufficient resources are not in place and/or Government does not compel local authorities to carry out their statutory duties.

JC8. The cost-benefit analysis in the Impact Assessment acknowledges that**:**

> **'Resource constraints in local authorities could reduce the number of cases considered by local authorities and so undermine /negate the non-monetised benefits of the stakeholder working group proposals. . . . [T]he capacity of local authorities to process claims is declining and may be overstated in this assessment.'**

When the concept of the 'cut-off date' was suggested by the Countryside Commission in 1999 as a measure which could be included in the Countryside and Rights of Way (CROW) Act 2000, it was careful to include the following caveats:

> *'Having considered all the responses carefully we have concluded that, in order to succeed, any measures to improve the recording and management of rights of way will need to include action on all the following main issues:*
>
> *Adequate long-term funding arrangements need to be put in place.*
>
> *Highway authorities need to carry out their rights of way duties properly.*
>
> *The legislative framework and administrative practice need to be improved.*
>
> *These issues are interrelated. Unless all three are addressed simultaneously, there can be little prospect of genuine widespread improvement.'*

The conclusions in Natural England's report on Discovering Lost Ways (2008) also echoed the Countryside Commission's recommendations to Government.

> *'The over-riding issues raised throughout the review concerned resourcing for rights of way and the present legislation. The current resourcing would severely limit the local authorities' ability to process our research outputs to modification order stage and then if required to public inquiry, or indeed to take on a further maintenance liability once the route is open for public use. The slow speed at which local authorities tend to process claims is not conducive to a quick return for either Natural England's or the volunteer sector's investment in research activity. This resource gap must be addressed if any historic routes project is to result in routes in the ground within an acceptable timescale.'*

The Ramblers' report on the reduction of funding for rights of way in England (2012) assessed the impact of the current budget cuts. It reported that 69% of councils had cut their budgets and that many have reduced their path maintenance and are unable to be able carry

out their statutory duties. This has resulted in a loss of staff and expertise, to the extent that some local authorities are unable to process modification orders.
If budget cuts continue in this sector the impact of this Bill will not simply result in a temporary suspension of public services but will lead to permanent closure and loss in the provision of the public's access to the countryside. We do not believe this issue has been given sufficient weight.

JC9. The significant contribution that equestrian businesses make to the economy needs to be taken fully into account. The rights of way network plays a vital role in facilitating the grass roots of the equestrian industry in England. It is usual for riding schools, livery yards, trekking establishments and other equestrian tourism businesses to rely on public rights of way in order to access the countryside.

Even with the reduced network that we are obliged to work with at the moment, equestrian businesses contribute many millions of pounds to local economies (for example, an estimated £30 million annually in Bradford District alone).

Incompleteness of the network is stifling the potential of the equestrian sector, which is capable of playing a greater role in encouraging business and tourism. However, if their infrastructure is not properly recorded in the time allotted, they could face closure or be compelled to re-locate at their own expense. Any reduction in our network that may arise in consequence of the measures in this Bill would be damaging.

Comments on Clauses

Clause 12: Recorded rights of way: additional protection

SWG proposal 20

The creation of 'protected rights of way' so that their existence cannot be challenged after the cut-off date in 2026 is a positive step that should strengthen the legal force and reliability of definitive maps. However, we feel the wording in section 55A(2)(b) is not easy to understand.

Clauses 13 and 14

We propose that Clauses 13 and 14 be replaced by a single clause that enables a surveying authority to designate routes that are known to be public but which have not been recorded. This would be in the interest of the landowners (who need the rights to access their land) and the public (who need to have public rights of way). It would remove the problem of landowners having to rely on private rights to access their land Designated routes should simply be added to the definitive without recourse to the WCA 1981 s.53 procedure.[336]

[336] The precedent is the conversion of RUPPs to restricted byways under the NERC Act.

Clause 13. Unrecorded rights of way: protection from extinguishment

SWG proposal 27

This clause should be abandoned for the following reasons:

the ability to designate routes is going to put a strain on local authority resources, but only in the narrow timeframe of a year. This may well be unrealistic. A designated route would then have to be added to the definitive map under the Wildlife & Countryside Act 1981, s. 53, increasing the existing backlog of applications submitted by the public in the run-up to the cut-off date. It is unlikely to have any real benefit.

Resurrecting rights that have been extinguished is a legal nonsense and demonstrates the illogicality of extinguishing historical rights in the first place.

Clause 14. Conversion of public rights of way into private rights of way

Not an SWG proposal

This clause should be abandoned for the following reasons:
The category of privately owned public right of way that is most likely to be affected by Clause 14 is routes originally identified as Roads Used as Public Paths (RUPPs) under the NPAC Act 1949, but which were only recorded as footpaths on the definitive map. These were mainly public vehicular routes which the landowners and occupiers have an obligation to repair by reason of tenure.[337]

Many of these were downgraded to footpath status at an early stage in compiling the definitive map, often without advertisement. The problem was widespread and routes have to be claimed on a one by one basis.

Measures that disadvantage or remove rights of the public

- **The removal of the applicant's rights to apply directly to the Secretary of State.**
- **The move towards deciding cases using written evidence rather than public inquiry, where there is uncertainty that the exchange of information between all parties concerned will be made available and transparent.**
- **The removal of the phrase *'or is reasonably alleged to subsist',* and replacing it with an unknown standard for the evidence required by the new 'Preliminary Assessment' to be applied by local authorities**

[337] RUPPs that were not subjected to illicit downgrading have been redesignated as restricted byways under the Natural Environment and Rural Communities Act. This was done without recourse to long-winded procedures.

Biographical and contact information

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I have been carrying out historical research to support claims to restore the bridleway network for over 20 years. I am currently a member of the Equestrian Access Forum (England) and Bradford MDC Local Access Forum.

Sue Hogg, Research and Projects Coordinator of the South Pennine Packhorse Trails Trust and Chair of the National Federation of Bridleway Associations

I carry out historical research and submit applications for modification orders on behalf of the Trust. I also assist local groups with applications and Schedule 14 appeals. I have also been involved in organising restoration work on routes for which we have obtained legal status.

I represent the NFBA on the Rights of Way Review Committee, and am a member of the Equestrian Access Forum and Lancashire CC Local Access Forum.

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