

IMPROVING THE LEGISLATIVE FRAMEWORK AND ADMINISTRATIVE PRACTICE

35. For convenience, our advice to the Government on improving the legislative framework and administrative practice is structured in accordance with the objectives used in *Rights of Way in the 21st Century*.

Objective 1:

Meeting and subsequently sustaining the National Target throughout England

36. The issues of funding and business planning have been covered above. But there remains a need to ensure clarity and consistency about how "meeting the National Target" should be interpreted in practice. The Commission has begun work on this. There is also a need to ensure that highway authorities plan ahead to sustain the target once they have met it.

37. Recommendation 8:

The Government should ask the Countryside Agency:

- to establish, in consultation with the relevant interests, consistent arrangements for the recognition of highway authorities meeting the National Target; and
 - to produce, in consultation with the Local Government Association and CSS, guidance for highway authorities on the preparation of costed strategies for sustaining the National Target once they have met it.
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Objective 2:

Providing a more extensive network, particularly for riding and cycling

38. The Commission believes that there is a continuing need to improve, rather than merely preserve, the rights of way network. The comments we have received on *Rights of Way in the 21st Century* have made it clear that horse

riders, cyclists, horse drawn vehicle drivers and motorised users all regard themselves as relatively poorly served by the currently available network.

39. We have concluded that, in the immediate future, the highest priority in respect of this objective is the recording of existing but currently unrecorded rights. Our advice in respect of that issue is set out under Objective 3 below. Our advice on making unclassified roads fully available for public use is set out under Objective 8 below.

40. As well as dealing with the immediate priority of recording currently unrecorded rights, attention needs to turn to making improvements to the network through new creations. Provision for this should be made now. We believe that it would be appropriate for highway authorities to have a statutory duty to review and improve the rights of way network. At present, however, uncertainty over the cost of new creations deters highway authorities from using their existing creation powers. Government will therefore need to ensure that the cost of new creations are reasonable in two respects: firstly, they should provide reasonable compensation for landowners; and, secondly, they should enable necessary improvements to the rights of way network to be made at reasonable cost to the public purse.

41. Recommendation 9:

The Government should propose legislation to give highway authorities a duty to review the adequacy of the rights of way network in their area periodically - say every ten years. Such reviews should be undertaken as part of authorities' work on recreation strategies and sustainable transport plans. They should be carried out through a process of public consultation, and based on guidance approved by the Secretary of State. Highway authorities should be required to prepare and implement programmes of new creations to address any needs identified through the review.

42. Recommendation 10:

The Government should ask the Countryside Agency to draft guidance for highway

authorities on the criteria and priorities for such reviews.

43. Recommendation 11:

The Government should act to establish a reasonable scale for the compensation costs of creating new permanent rights of way by order, taking into account the established use of the land.

Objective 3:

Making the legal processes for recording and changing rights of way quicker, cheaper, less bureaucratic and less adversarial

44. Our first proposal under this heading in *Rights of Way in the 21st Century* - i.e. to close definitive maps to further amendment based on historical (documentary) evidence - proved to be very controversial. It attracted much opposition - based on both principle and pragmatism - but also some support. We have considered carefully the arguments that have been put to us. We have not changed our basic view, which is:

- a. that the historic network should be researched and recorded as fully as possible on a once-and-for-all basis (recognising that this has not yet been done properly, despite the intentions of previous legislation);
- b. that definitive maps should then be closed to further amendments based on historical documentary evidence (but that the provisions under HA80 s31 for modifying definitive maps on the basis of user evidence should continue unchanged);
- c. that the closure of definitive maps to further historic amendments should be accompanied by the extinguishment of any remaining unrecorded rights (otherwise definitive map closure would be pointless); and
- d. that these measures should be accompanied by both adequate funding for the one-off process of research and recording; and the adoption of measures for creating new rights of way set out at paras 40-43 above.

45. However, we understand that there is a widely held belief - among both rights of way managers and users - that there are large numbers of rights of way not yet recorded. This is a sensitive and complex issue, on which it is necessary to proceed carefully in order to ensure that the wider public interest is safeguarded, while moving to a position of far greater certainty about where, and what sort of, rights of way do and do not exist.

46. Recommendation 12:

The Government should:

- ask the Countryside Agency to advise it on the scale and cost of the task of researching and recording currently unrecorded rights of way; and to prepare an operational plan for implementing the task, in order that the Government can set completion dates for this task, taking account of the amount of work to be done in each highway authority area;
- state that it intends to take powers to enable the eventual closure of individual definitive maps to further amendments based on historical documentary evidence, but that these powers will be conditional upon the historic network having been researched and recorded to a high standard, against criteria set and monitored by a competent body at arm's length from the Government; and
- make additional and adequate resources available to highway authorities and relevant voluntary bodies for the task of completing the necessary research.

47. The procedures for making, and resolving objections to, definitive map modification orders need clarifying and improving. We believe that applications, consultations, objections, determination, and grounds for appeal should all be covered by a statutory code of practice. This code should specify relevant grounds for objections to a modification application, and should provide for the early dismissal of irrelevant objections. It should also specify a requirement for transparency in the determination of applications and objections - whether by the highway authority or the Secretary of State or his representative. The