

## Implementing the Cut-Off Date

In 1999 the Countryside Commission suggested the "cut-off date" as a measure which could be included in the Countryside and Rights of Way (CROW) Act 2000:

***"Rights of Way in the 21<sup>st</sup> Century – Conclusions and Recommendations" 1999<sup>i</sup>.***

**The Government should:**

- ***"state that it intends to take powers to enable the eventual closure of the definitive maps to further amendments based on historical documentary evidence, but these powers will be conditional upon the historic network having been researched to a high standard, against criteria set and monitored by a competent body at arm's length from Government; and***
- ***Make further and adequate resources available to highway authorities and relevant voluntary bodies for the task of completing the necessary research."***

But, it was intended that it would be implemented, only, if all three of the "Main Issues" it had identified as impeding any real progress, were tackled simultaneously:

***"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 provision for a cut-off date was duly included in the CROW Act 2000 sections 53 to 56, and it was decided to delay bringing them into force until scale of the task had been evaluated.

So what action has been taken in the 13 intervening years?

In 2004 Countryside Agency (CA) authorised an Archive Research Unit as part of its Discovering Lost Ways project. The intention was to trawl through the archives relating to selected areas, with a view to finding what historical documentary evidence was available to support future claims. In 2007 the CA's successor authority Natural England (NE) carried out a review of the project, and in March 2008 announced that it was to be abandoned.

Natural England's conclusions<sup>ii</sup> echoed Countryside Commission's recommendations to Government in 1999 that the legislative framework and administrative practice need to be improved if there is to be any genuine widespread improvement.

***"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."***

In the year 2000 the length of bridleways in England was estimated at around 22,250 miles – the latest estimate produced by Natural England in 2011 is still around 22,250 miles. A study of the reduction in funding carried out by the Ramblers Association in 2012<sup>iii</sup>, reported that local authorities rights of way budgets are being reduced year on year. This has resulted in:

- a reduction staff in rights of way departments across the country - and a loss of expertise.
- some rights of way departments have more or less stopped processing rights of way claims – some authorities are not able to carry out their statutory duty and the existing backlog of claims is not being reduced.

There has been virtually no progress. Government is now proposing to bring the cut-off date into force, together with changes to the legislative framework and administrative practice. But, no assurances have been given that adequate resources will be in place to enable and encourage the local authorities to carry out the task.

The "Impact Assessment"<sup>iv</sup> evaluating the effect of the rights of way clauses mainly focuses on saving money across Government departments. It also confirms that there is a risk that the accurate recording of paths may be affected by budgetary constraints.

This would be extremely detrimental to the still incomplete bridleway network in England and does not take into account the impact this may have on equestrian businesses across the country.

**"Key assumptions/sensitivities/risks**

***Resource constraints in local authorities could reduce the number of cases considered and so undermine/negate the non-monetised benefits of the stakeholder working group proposals. There is uncertainty around the data on which the estimates are based. The data and assumptions were tested through the consultation and suggest the capacity of authorities to process applications is declining and may be overstated in this assessment. This option does not come in the scope of OIIO as it is a simplification measure and there will be no impact on business.***

---

<sup>i</sup> CCP 550 - page 7 para 46.

<sup>ii</sup> NE Discovering Lost Ways Report. 2008

<http://www.badfa.org.uk/news/pdf/dlwreport&email&mod4duplex.pdf>

<sup>iii</sup> Ramblers Report into the reduction of rights of way funding in England. October 2012

<http://www.ramblers.org.uk/~media/Files/Campaign%20with%20us/Ramblers%20report%20on%20the%20reduction%20of%20funding%20for%20rights%20of%20way%20in%20England.pdf>

<sup>iv</sup> Impact Assessment (IA) Full Economic Assessment

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/82506/prow-consult-ia-simplifying-20130729.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/82506/prow-consult-ia-simplifying-20130729.pdf)