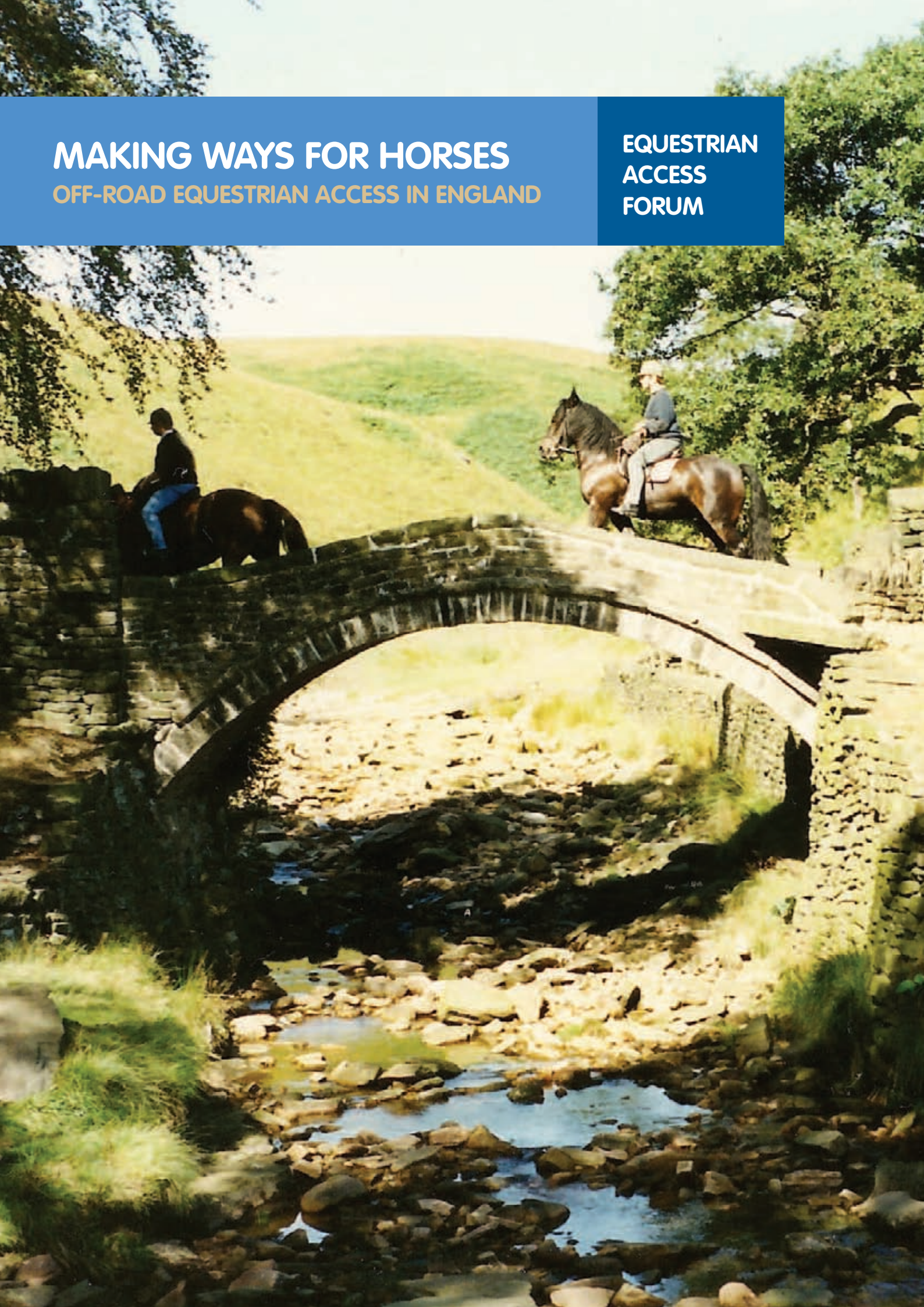
MAKING WAYS FOR HORSES

OFF-ROAD EQUESTRIAN ACCESS IN ENGLAND

EQUESTRIAN ACCESS FORUM



EAF MEMBERS
The British Horse Society, the Byways and Bridleways Trust, the British Driving Society, the National Federation of Bridleway Associations, the South Pennine Packhorse Trails Trust

Front cover: Old route; modern need. Colne Valley Saddle Club crossing the historic Eastergate Bridge at the start of the Marsden Packhorse Road (photo: Anthony Carter)

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EQUESTRIAN ACCESS FORUM
August 2012

OUR AIM

The provision of a cohesive, comprehensive, integrated nation-wide network, free at the point of use, with a horse, on a bicycle or on foot.

Acknowledgements

Special thanks are due to Sue Hogg of the National Federation of Bridleway Associations who has drafted and marshalled the comments of the members of the Equestrian Access Forum to produce this document.

The publication of the document would not have been possible without the financial support of The British Horse Society, the National Federation of Bridleway Associations, Byways and Bridleways Trust, Burnley Bridleways Association, Staffordshire Moorlands Bridleways Association, Telford Bridleways Association, and Waveney Byway and Bridleway Association.

Special thanks to Didy Metcalf (SPPTT), Sue Hogg (NFBA) and Robert Halstead (BBT) for Appendices 2, 3, 5, 6, 7 and 9.

CONTENTS

THE EQUESTRIAN ACCESS FORUM

The Strategy for the Horse Industry in England and Wales, published in 2005, was prepared by the British Horse Industry Confederation in partnership with the Department for Environment, Food and Rural Affairs, the Department for Culture, Media and Sport and the Welsh Assembly Government.

The purpose of the Strategy is to foster a robust and sustainable horse industry. Prior to its publication views on the main strategic issues were sought from organisations and individuals across the whole Industry. One of the key findings to emerge from the consultation was that improvement to an off-road riding and driving network is urgently needed, in order to encourage economic growth, increase tourism and provide a safe environment for learning opportunities.

Following on from recommendation 26 of the strategy, the main equestrian access organisations have come together to form the Equestrian Access Forum (EAF). These organisations are The British Horse Society, the Byways and Bridleways Trust, the British Driving Society, the National Federation of Bridleway Associations and the South Pennine Packhorse Trails Trust. The Trails Trust ceased to be a member in 2010.

The EAF is responsible for implementing the 'Access Actions' of the Horse Industry Strategy, namely, Aim 5 'Increase access to off-road riding and carriage driving'. In this, the Forum is acting as an advocate for everyone who rides or drives a horse.

This document sets out the EAF's proposals for the future provision of equestrian access in England. Many of the proposals can be achieved under existing legislation. Some proposals may require new legislation to enable them to be fully realised.

Abbreviations in the Text

BHIC	The British Horse Industry Confederation
BOAT	Byway open to all traffic
CoAg	Countryside Agency
CROW	Countryside and Rights of Way Act 2000
Defra	Department for Environment, Food and Rural Affairs
DETR	Department for the Environment, Transport and the Regions
DfT	Department for Transport
DMMO	Definitive map modification order
EAF	Equestrian Access Forum
EFRA	Select Committee on Environment, Food and Rural Affairs
ITN	Integrated Transport Network
LRA	Legal Record Authority
NERC	Natural Environment and Rural Communities Act 2006
NSC	National Surveying Commission
ORPA	Other routes with public access
ROWIP	Rights of Way Improvement Plan
RUPP	Road used as a public path
UCR	Unclassified road

Paddy and the panopticon, the Singing Ringing Tree, Crown Point, Burnley
(photo: Eddie Rawlinson; copyright Cosima Towneley)

EXECUTIVE SUMMARY

The horse industry contributes £7.5 billion a year to the British economy, a significant amount in these harsh economic times. Rights of way and other forms of off-road access are essential facilities for this industry to flourish, and to save riders from having to risk their lives riding on the roads. The lack of a comprehensive rights of way network is inhibiting the horse industry's growth.

Over the years access legislation has provided liberally for walkers and cyclists, but in the process has gradually eroded equestrian rights.

- **1949** The National Parks and Access to the Countryside Act introduced the legal recording of public rights of way on the definitive map. Unfortunately it resulted in many ancient bridleways being incorrectly recorded as footpaths or being omitted entirely.
- **2000** The Countryside and Rights of Way Act (CROW) has introduced a 'cut-off date' for the recording of under-recorded and unrecorded historic rights. From 2026 no more highways can be added to the definitive map on the basis of historical evidence; all unrecorded rights will be extinguished. This means that equestrians will only have access to a fraction of the historic network, which is already badly fragmented.

  CROW has also created a category called access land, but has placed a restriction on taking horses onto access land. This has since been extended to the foreshore.

  Many local authorities have forgotten riders' rights to air and exercise on urban common under the Law of Property Act 1925. They have erected misleading 'open access' signs for walkers and put up barriers that effectively prevent riders from riding on land that they have a legal right to use.

  Ordnance Survey maps depict urban commons as access land, thereby misleading other users and making it difficult for riders use to their legal access.
- **2005** Publicly owned Forestry Commission land has been dedicated as access land to walkers under s.16 of the CROW Act, but not to equestrians. In many areas, horse riders and carriage drivers now have to buy a permit to use forest land, which is public land that is freely open to walkers and cyclists.
- **2006** The Natural Environment and Rural Communities Act (NERC) removed motorists' rights over dual status routes (these are public roads recorded on the list of streets but also shown as footpaths or bridleways on the definitive map). In some cases local authorities have erected anti-motor barriers across such routes, effectively preventing legal use with horses.
- **2009** The Marine and Coastal Access Act has created a new coastal walking path around England, and has designated the foreshore as access land. Once again, walkers are given a statutory right of access, while equestrian rights based on common law or custom are unprotected.

Walkers have access to 100% of the rights of way network, yet riders only have access to 22% and carriage drivers to 5%. The majority of equestrians are totally dependent on public rights of way, but few have a choice of safe local routes.

The only method that has delivered significant gains to the equestrian network has been to reclaim historic routes through the definitive map process. This helps to provide a useable network by restoring missing links and, at the same time, it preserves our cultural heritage for future generations. Many old routes still have their original features: paved causeways, holloways, bridges, guide posts, wayside wells and troughs. Some still have their original drainage system and macadamed surface of compacted stone. The cost of bringing such routes back into use is often much less than building new ones. For those travelling along old ways, their historical significance adds greatly to the experience, whether riding, walking or cycling.

Local authorities' power to create new bridleways under s. 25 of the Highways Act 1980 has proved ineffective in adding bridleways to the definitive map. When asked to dedicate a route that would make a useful link in the bridleway network, most landowners say no. If a landowner is unwilling to dedicate, there is no redress. Where routes cross the land of two or more owners, a single refusal can stop a whole scheme.

Making Ways for Horses puts forward practical measures to address the imbalance in the current provision of access. The proposals will considerably enhance the equestrian rights of way network and other types of access, thereby providing a permanent resource for equestrians, as well as walkers and cyclists.

THE PROPOSALS

Proposal 1	Access should be for everybody
Proposal 2	Repeal the cut-off date of 1 January 2026 and the extinguishment of unrecorded rights (Countryside and Rights of Way Act 2000, ss. 53-56)
Proposal 3	Record unclassified roads on the highway register as public carriageways
Proposal 4	The list of streets to become a legal record of status
Proposal 5	Adopt a single status for footpaths, bridleways and restricted byways
Proposal 6	Simplify the definitive map modification process to facilitate the recording of all public rights of way other than UCRs
Proposal 7	Carry out an independent review of the definitive map to ensure that all unrecorded rights are identified and recorded
Proposal 8	Adopt an automatic upgrade procedure for existing public footpaths and unrecorded paths to bridleway status on agreed documentary evidence
Proposal 9	Make the information on road classification held by the Ordnance Survey available for completing the legal record of the list of streets and the definitive map
Proposal 10	The creation of an independent Legal Record Authority (LRA) to be responsible for recording public rights of way
Proposal 11	The appointment of an independent Rights of Way Commissioner to oversee how local authorities carry out their rights of way functions, particularly in relation to equestrian access
Proposal 12	Where use of a way has been called into question, the local authority is required to collect evidence of use and interview witnesses
Proposal 13	User claims should be determined within 12 months
Proposal 14	Limit the right of objection to a user claim to the owner(s) of the land crossed by the claimed way
Proposal 15	Require landowners who object to a claim to produce evidence of title to the land crossed by the claimed way
Proposal 16	Applications to delete or downgrade a public right of way only to be made by the landowner, who must produce title to the land
Proposal 17	Presumed dedication on the basis of 20 years' use of a way at any time before the way was called into question
Proposal 18	Replace user claims with creation orders
Proposal 19	Creation orders consequent on 10 years' use of a way
Proposal 20	Government, other agencies and local groups should encourage landowners to dedicate public rights of way
Proposal 21	Dedication of all or part of a path to be included on the register of statutory declarations
Proposal 22	Landowners and voluntary organizations to have the right to apply for a legal event order consequent on express dedication or dedication by agreement
Proposal 23	Publish a standard scale of compensation for creation orders
Proposal 24	Create a statutory definition of 'demonstrable public need'
Proposal 25	Members of the public to have the right to apply for a creation order where there is 'demonstrable public need'
Proposal 26	Urban common to be signed by the local authority and shown on Ordnance Survey maps

Proposal 27 The right of air and exercise on horseback over urban common to be included in all relevant government guidance

Proposal 28 Government, local authorities and Natural England to provide, assert and protect equestrian access to commons

Proposal 29 The maps and registers of common land to be made available online by the registration authority

Proposal 30 Routes leading onto and over common land to be recorded as restricted byways or bridleways, and gated and signed appropriately

Proposal 31 Linear paths over unregistered commons (including those that were withdrawn from the register) and manorial waste should be presumed to be restricted byways

Proposal 32 Review the level of evidence required to claim bridleways and restricted byways crossing access land and urban common

Proposal 33 Remove the restriction on taking horses onto access land currently imposed by Schedule 2(1)(c) of the Countryside and Rights of Way Act 2000

Proposal 34 Before any CROW Act restrictions are imposed or reviewed, the relevant authority should be responsible for ensuring all undefined equestrian rights have statutory protection

Proposal 35 Provisions must be put in place to speed up the modification order process for paths leading onto or crossing access land and open land

Proposal 36 Amend the CROW regulations by an affirmative resolution to include riding and driving horses on the foreshore

Proposal 37 Include horse riding and carriage driving on the coastal path wherever physically possible

Proposal 38 Where the coastal path is affected by erosion the rollback provision to extend to higher rights

Proposal 39 Ensure that access leading to the foreshore includes horseriders and carriage drivers

Proposal 40 Horseriders and carriage drivers should have access to woods and forests on the same terms as walkers and cyclists

Proposal 41 Public access to woods and forests should be integrated with the public rights of way network

Salter Rake Gate, Langfield Common, Todmorden. Part of a Saxon salt road, now used by the Pennine Bridleway Mary Towneley Loop (photo: SPPTT)

INTRODUCTION

From time immemorial the principal means of transport was the horse. For centuries there was a public right on foot and on horseback over open land, some of which still survives as urban common. Gradually linear routes evolved, crossing the wastes, giving England its unique heritage of ancient roads and bridleways that were, for the most part, in continuous use up to the middle of the 20th century. Although well intentioned, the attempt to legally record these rights on the definitive map under the 1949 National Parks and Access to the Countryside Act produced unforeseen problems.

Many rights of way, blocked up during the Second World War, had not been reopened. Publicly maintained roads were not to be recorded on the definitive map – the intention was to record footpaths and bridleways. Historically, many public roads were privately maintained and as a result looked more like footpaths and bridleways.[1] Few county councils consulted historical records in any great detail, but relied on surveys carried out by local volunteers. Many horse riders were unaware of the need to record public rights of way, and there was no national organization looking after their interests. As a result, many old bridleways and minor roads were not recorded or were recorded only as footpaths.

The failure to record bridleways and byways did not immediately prevent horse riders from using them, but the fact that a way is not recorded makes it vulnerable to obstruction and less likely to be maintained. Incomers tend to think of the road to their property as their private access rather than an unrecorded public right of way. Inexorably over the ensuing three decades the available network started to shrink.

In the 1980s, initiatives like the Pennine Bridleway National Trail and long-distance riding routes such as the Icknield Way, the Countryside Commission's Paths, Routes and Trails strategy and the Milestones project with its target that all rights of way should be legally recorded by 2000, brought with them the hope among horse riders that their situation was about to improve and led to the formation of many local bridleway groups. Some local authorities set up bridleway improvement schemes in response to local demand. However, improvements were contingent on definitive status, and recording missing rights, far from getting easier, was becoming more contentious and protracted.

By the mid-1990s the government's focus had moved onto cycling as sustainable transport (horses are no longer recognised as transport), and then onto open access (but only for those on foot), brought about by the Countryside and Rights of Way Act 2000. Implementing the CROW Act diverted funding from the Pennine Bridleway, while the Countryside Agency's Discovering Lost Ways project – intended to sort out the definitive map once and for all to mitigate the effects of the government's proposal to set a cut-off date to recording historic rights – was abandoned. Many surveying authorities now have a huge backlog of claims that they are struggling or failing to deal with.

Although the need to improve bridleway access seemed to drop off the government's agenda, there has been a swift expansion in horse ownership over the past ten years. The number of people riding in the UK has doubled to 4.3 million, while the number of privately owned horses in Great Britain had risen to 1.2 million by 2005, an increase of 30% over 1999 estimates.[2] The majority of horse owners keep their horse for riding out – an activity almost totally dependent on the public rights of way network.

The growth in equestrianism has not been matched by a corresponding increase in or improvement to the network, either through the definitive map process or by other means. The inadequacy of current provision for horse riders and the failure of local authorities to record historical rights has been acknowledged by central government. There is no single solution, but in what follows we offer a range of options for completing the historic record, and for extending the network and filling in the missing links so that people can ride and drive in safety.

It is important to remember that routes for horses are also there for cyclists and walkers and for the mobility impaired. Providing safe off-road access for equestrians should not be treated as an optional extra. The network should provide for all non-motorised users, thereby providing best value for the tax payer and the user.

[1] These should have been recorded as roads used as public paths (RUPPs), but many were omitted from the definitive map or only shown as footpaths.

[2] This figure is based on 721,500 households; in Great Britain a total of 1 million households (4%) contain at least one person who is responsible for the daily upkeep of a horse, either in a professional or private capacity (National Equestrian Survey 2005 JN05142/ Prepared for the British Equestrian Trade Association, January 2006, by Swift Research Ltd).

PART 1

WHERE WE ARE NOW

Chapter 1 - ASSESSING THE NEED

[3] See Appendix 2 Gender and Countryside Access

[3A] See Appendix 10 The Health Benefits of Horse Riding

[4] BETA Survey, 1999.

[5] 'A Report of Research on the Horse Industry in Great Britain', prepared by the Henley Centre, commissioned by the Department for Environment, Food and Rural Affairs and the British Horse Industry Confederation, with the National Assembly for Wales and the Scottish Executive, March 2004.

[6] *Yorkshire Post* TGI 2000.

[7] Figures based on the final report of the Committee of Inquiry into Hunting with Dogs in England and Wales, 2000.

[8] *The State of the Countryside*, 2001, p. 69.

1.1 Who Goes Riding

The majority of riders are women and children. Between 2004 and 2011 the proportion of regular riders who are female has risen from 75–83%[3] to over 90%.[3A]

Riders cover a broad age range, from the very young – a third are under 15 years of age[4] – to the very old, with the largest single group – 38% – aged between 25 and 44. The number of people aged 50 and over who ride is growing,[5] and people continue to ride into their 70s and 80s.

Riding is a growth activity. Between 1999 and 2006 the number of riders in Britain increased by 44% to 4.3 million (i.e. people who had ridden at least once in the past 12 months), which works out as 7% of the total population. Of these, 2.1 million people ride or drive at least once a month, although the number of carriage drivers is relatively small – 11,000.

The majority of horses – 1.2 million – are kept for private use. The main reason given by people for keeping a horse is to go leisure riding[6] (68% of riders), that is, on public rights of way. There is a distinction between those who ride out for pleasure and competition riders (show jumping, eventing, dressage). Hunting, which perhaps provides the main image of horse riders in the media and the public imagination, only comes third (less than 1% of all riders).[7] According to Defra, only 6–10% of horses in this country were involved in hunting.

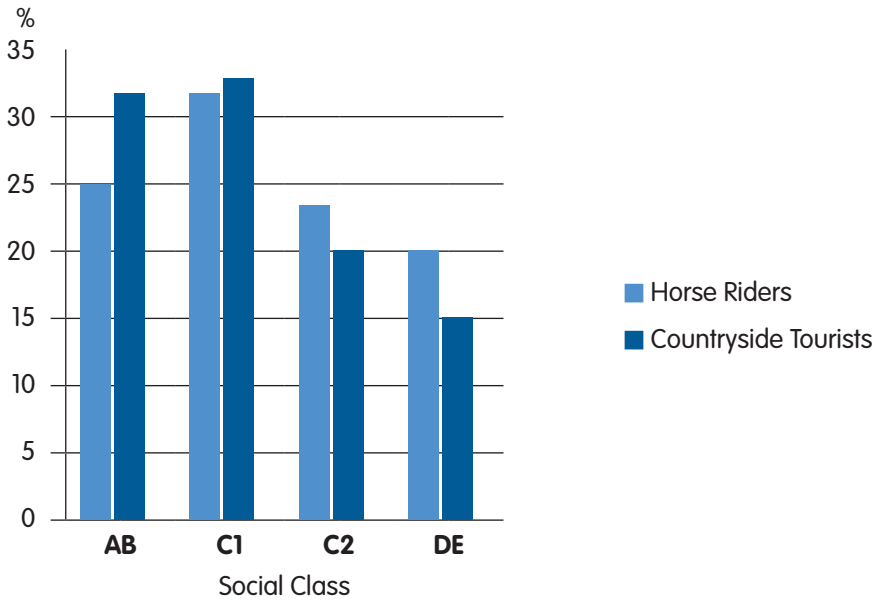
Despite the up-swell of activity in the 1980s, riding out has only increased by 5% since 1999. This is in part due to the increase in speed and volume of traffic, which deters many people from riding out, exacerbated by the disjointed nature of the equestrian rights of way network, its general deterioration, and the lack of any clear policy on the part of the government to promote horse riding by providing safe places to ride. Horse riding is commonly perceived to be an elitist activity. This is a profound misconception. Horse riders are evenly distributed across all social groups, whereas car-borne countryside tourists tend to be upper or middle class.[8]

[9] This was in the 1990s. It is likely that more people have given up in the present decade.

[10] The Horse Trust, 2007.

Carriage drivers also come from all socio-economic categories and are found in both urban and rural areas. Driving is very much a family activity, with many husband and wife teams. Because of road safety issues there is a fairly high attrition rate, with as many people leaving the sport as joining it each year.[9]

Comparison of demographic spread of horse riders and countryside tourists



Horses are uniformly spread throughout the country, and are found in urban as well as rural areas. For example, the districts of Burnley and Oldham are each home to some 2000 horses, most of which are kept on the hill farms surrounding the built-up areas, sheep and cattle having been replaced by horses and ponies on do-it-yourself livery. The urban rider is almost entirely dependent on the public rights of way network for places to ride, plus – where it is exists and is accessible – land designated as urban common (see chapter 6).

Number of horses in England by region[10]

North East & Yorkshire	202,500
North West	121,500
Wales & South West	216,000
Midlands	256,500
Greater London	135,000
South East & East Anglia	310,500
Total	1,242,000

Examination of user evidence forms reveals the following profile of the average horse rider: female, in her late thirties or early forties, with a full-time job (respondents include: radiographers, school-teachers, nurses, secretaries, hairdressers). For those with families and a horse to care for, there is little time left for campaigning for bridleways.

1.2 What Horse Riders and Carriage Drivers Want

Horse riders and carriage drivers want a local network of rideable and drivable routes which gives a variety of local rides and links to wider networks. Riders want to get off the roads, away from tarmac and traffic. Carriage drivers have slightly more specialised needs: well-drained 'green' (unsealed) roads and genuinely quiet lanes. Most riders and drivers can identify routes (most of them definitive footpaths, often enclosed lanes) which – if they were accessible – would make a significant improvement to their local network.

1.3 Vulnerable Users and Road Safety

Life saving but illegal. Riders use the pavement to get away from traffic

Horse riders are classed as vulnerable users, along with motorcyclists, cyclists and pedestrians. Approximately 3,000 road accidents reported each year involve horses, of which an average of 142 include personal injury.[11] In 1992 an estimated 29 accidents a day involved horses and 71 involved cyclists.[12] However, the number of recorded accidents is thought to be a gross underestimate – many injuries or near misses are never reported. Many riders and carriage drivers are afraid to ride down motor roads to get to their nearest bridleway, such is the increase in traffic. It is therefore important that safe off-road links are established to join up the existing equestrian rights of way network. Safer routes for equestrians also means safer routes for walkers and cyclists.

In 2004, 46% of serious road casualties and more than 50% of road deaths occurred on rural roads.[13] However, very few steps have been taken to reduce the speed limit on country lanes, even those designated as quiet lanes, where the maximum speed is 60 mph. As well as motor cars and cycles, rural roads are frequently used by heavy-goods vehicles, tractors and agricultural machinery. These are a major deterrent to everyone, horse riders included, especially on narrow roads where there are no verges and few passing places or gateways to allow larger vehicles to pass.

This raises concerns about welfare: horses need to be ridden out on a regular basis. For humans, safety is critical. However, there is a disjunction here: safe routes for children to walk or cycle to school are a priority; safe routes that enable children to ride out are not.

[11] House of Commons *Hansard*, Written Answers for 24 May 2007; the average is for the years 2003–05.

[12] *A Bridleway Strategy for Lancashire*, 1997; figures supplied by J. Nicholl, University of Sheffield Medical School, 1992.

[13] Department for Transport, Circular 01/2006.

Chapter 2 - PRESENT PROVISION

2.1 The Statutory Network

For the equestrian, the statutory network includes unclassified roads (UCRs),[14] byways open to all traffic, restricted byways and bridleways.

Currently horse riders in England have access to 22% (42,100 km) of all public rights of way recorded on the definitive map, while carriage drivers have access to only 5% (9,700 km). If all unclassified roads were fully available, these figures would rise to 27% (57,162 km) and 10% (20,762 km) respectively, a significant increase – particularly for carriage drivers – without any need for legislation.[15]

However, many unsealed UCRs are not currently accessible because of lack of maintenance, or because they are obstructed. In addition, some highway authorities are reluctant to admit the whereabouts of all their UCRs.

2.2 Inequality of Current Provision

In 1998 the Countryside Commission acknowledged that horse riders and cyclists were poorly served by rights of way and recommended developing a more extensive network as a matter of urgency.[16]

'The legacy of past neglect and piecemeal legislation is a management framework which is expensive and time consuming . . . and which is perceived to generate conflict and uncertainty. . . . The condition of the network is likely to deteriorate again in the future unless a viable long term management system is now put in place. One of the obstacles to a viable overall system is the legal record, which is still far from up to date and on which progress is generally slow. . . . ' [17]

Despite the Countryside Commission's warning, the government brought in the Countryside and Rights of Way Act 2000, which proposes to introduce a cut-off date of 1 January 2026 for adding unrecorded historic rights of way to the definitive map; after this date any unrecorded rights will be extinguished. If this legislation is implemented, it will set an arbitrary limit on the extent of the equestrian network. Any improvement to the network, therefore, is now a matter of urgency.

2.3 The Historic Network

Equestrian access mainly relies on the historic network of highways and byways that are no longer part of the public network of tarmacked roads. These were the old through routes that went from parish to parish, leading from one market town to another; because of their importance, most of them had a metalled[18] surface and proper drainage, and had to be kept in repair by the surveyor of highways for the parish. From the market-town roads radiated the byways and bridleways that provided access within each parish, linking villages, hamlets and outlying farms. These were usually repaired by the adjacent landholders, who could be indicted at Quarter Sessions if they failed to keep their stretch of road passable. For today's equestrian access, this network is ideal in terms of its sustainability and suitability for horses.

The process of restoring these ancient highways also preserves an important element in the landscape that is part of our transport history and our cultural heritage. There is great beauty in many of these historic routes, some of which can be traced back over 3000 years. They are a legacy that needs to be understood, appreciated, tended, and handed on for the future.

[14] These are minor roads that are maintainable at public expense, many of which are unsealed.

[15] In 2000 the Department of the Environment, Transport and the Regions (DETR) estimated that in England and Wales there were around 9,656 km of unsealed unclassified roads. We estimate that this approximates to 8,362 km for England.

[16] Countryside Commission, *Rights of Way in the 21st Century*, 1998.

[17] op. cit., p. 5.

[18] Crushed stone, not tarmac.

2.4 The Extent of the Problem

An unrecorded hedged lane

In 2002 the Countryside Agency estimated that there were some 20,000 unrecorded rights of way – totalling 16,000 km – in England. These were broken down as follows:

Byways open to all traffic	2,700 km
Bridleways	4,000 km
Footpaths	9,300 km

This gives a total of 6,700 km of equestrian rights of way that have failed to be recorded on the definitive map. If these were all defined and available, there would be a 12% increase in bridleways and a 28% increase in byways (restricted byways and BOATs).[19] The Natural England and Rural Communities Act 2006 has severely reduced the ability to record BOATs and the restricted byway designation has extinguished unrecorded rights for mechanically propelled vehicles. This should help to reduce the level of objections attracted by applications for public rights of way for carriage driving.

In its 2002 report the Countryside Agency warned that unrecorded historic rights 'would be "lost" forever if they are not claimed before 2026. Furthermore, these "lost ways" are often the critical links between paths already on the map.'

Natural England, the successor to the Countryside Agency, published its corporate plan and strategic direction in October 2008. There is no mention in these documents of the plight now faced by horse riders and the issues surrounding equestrian access. For Natural England, horses appear to have no part in the future landscape of England.

[19] Countryside Agency, 'Implementing the lost ways project', AP02/38, 2002, Annex 3. (http://www.countryside.gov.uk/WhoWeAreAndWhatWeDo/boardMeetings/boardPapers/CA_AP02_38.asp)

Chapter 3 - ADDRESSING THE NEED

To improve equestrian access in both urban and rural areas, a radical change in thinking is required so that horses are always included.

What needs to be recognised is:

- equestrian access is vital for local economies
- equestrian access has a valuable tourism potential
- equestrian access is a form of sustainable recreation
- equestrian access gives more people the chance to participate in sport and leisure activities
- equestrian rights of way are especially needed in urban areas, where there are many riders and drivers who are totally dependent on them for exercise
- many women and children feel safer when riding alone than they do when walking or cycling alone

The current situation facing horse riders and carriage drivers calls into question present policies on gender, health and wellbeing, welfare, equality of opportunity, discrimination and personal freedom.

3.1 How the Horse Is Overlooked

The horse no longer has a recognised official designation. This has created the following problems:

- as late as 1999, statistics on the number of horses in the countryside were not fully available[20]
- the horse is no longer considered to be a form of transport, so routes for riding and driving were, until very recently, ineligible for integrated transport funding through the local transport plans
- the activities of horse riding and carriage driving are not included in the General Household Survey and many visitor surveys[21]

Lack of awareness of the existence of horse riding as a recreational activity has resulted in exclusion from policies and consequent lack of provision. Although the government has a national strategy for cycling, there is no equivalent strategy for horse riding. This means that awareness of horse riding as a legitimate activity that needs facilities and encouragement has not devolved to local levels. Improving equestrian access at a local level would be much easier if the government was providing a clear lead to local authorities and other access providers. For example, local authorities are required to produce cycling and walking strategies,[22] but are not required to produce riding strategies.

The other problem is funding. Public rights of way are maintainable at public expense. This renders them ineligible for grant-aid, resulting in the anomalous situation whereby it is possible to get government funding for non-statutory access but not for statutory access. If an exemption to this rule were made for recreational rights of way, it would be possible to attract the levels of funding currently achieved for the national cycle network created by Sustrans.[23]

Alternative means of providing equestrian access have been put forward, including pay-to-ride schemes on private land. However, these are not realistic alternatives to a statutory network. Such schemes have either been withdrawn (e.g. higher level entry), or are very limited in scope, and beg the question as to why, in some cases, horse riders should be made to pay for non-statutory access that is freely available to other users.[24]

[20] By 1980 the horse industry was the second largest land-based industry in the country (second only to agriculture, and larger than forestry and horticulture), occupying 800,000 hectares, and by 2001 was rapidly expanding. However, the Countryside Agency's report *The State of the Countryside* 2001 failed to mention this fact. The only information the 2001 report contained on equestrian activity was that 2% of car-borne trips to the countryside (some 2.5 million trips) were for pony trekking or riding.

[21] In December 2002 the government review of sport 'Game Plan' concluded that: 'The use of the General Household Survey as a source of participation data is inadequate for planning purposes.' Out of over 230 sporting activities in Sport England's review, horse riding was the 15th most popular in terms of level of participation.

[22] There is no national walking strategy. 'The document, produced in collaboration with the Ramblers Association, shows that after six years of time, money, four secretaries of State for Transport and a chain of promises, our goal of a national strategy still seems as far away as ever' (Living Streets website, 2007).

[23] A £50 million lottery grant for the NCN provided the leverage for an additional £200 million in grant-aid which mainly came from local authorities. The NCN, however, is owned by Sustrans, apart from the 70% which is on minor roads which are maintainable at public expense. If someone can explain the logic here the authors would be extremely grateful.

[24] For example, the Forestry Commission in Hampshire is charging riders to use permissive routes that are used by walkers and cyclists for free.

3.2 The Henley Centre Report and the British Horse Industry

The British Horse Industry Confederation (BHIC) was formed in 1999. However, it was not until 2004 and the Henley Centre report[25] that equestrian access and rights of way began to be addressed. The Centre came to the following conclusions:

'The continued improvement of "off-road" riding facilities

'At present there are a variety of different initiatives, both national and local, working to improve off-road riding in Britain. The emphasis here is not solely rural; indeed the need for the promotion of greater accessibility in urban fringe areas is just as key. The improvement of off-road riding opportunity would have multiple benefits:

- to safety and thus the growth of the [horse industry] sector
- to wellbeing
- to the sustainable use of the countryside and land management, and
- to equestrian tourism. . .'

'. . . The challenges vary geographically and it is at the local level where access can be negotiated and improved. However, there is a need for joined up national planning. The Countryside Agency has been leading some work; meanwhile highways authorities will produce Rights of Way improvement plans in 2007. There will be no statutory obligation to implement these plans.'

The study's recommendations were as follows:

- the horse industry should consolidate its efforts behind a lead organisation to promote its [access] needs, and articulate these nationally and locally[26]
- the formation of partnerships where possible and appropriate with other user groups, such as cyclists
- best practice at the local level to be established and promoted
- research to consider local need across Britain with regard to access issues and rights of way.

The Centre identified two strategic issues:

- the promotion of horse tourism within Britain ('tourism is one of the major opportunities currently presenting itself to the horse industry'), and
- the continued improvement of off-road riding

Following the Henley Centre's report, Defra sponsored a Sounding Board Meeting on 16 June 2004 for representatives of the horse industry and also those concerned about improving equestrian access. This was a unique event – for the first time the government seemed prepared to talk to the grassroots in the equestrian community.

Before the meeting, delegates were asked to send in a proforma response identifying their key concerns and how these might be addressed.

'The issue of improving riding access and off road riding produced almost 50% of all the written replies. This shows a huge interest, passion and enthusiasm for the subject. Many of the replies also displayed a great deal of frustration and lack of empowerment.'[26A]

[25] Commissioned by the Department for Environment, Food and Rural Affairs and the British Horse Industry Confederation, with the National Assembly for Wales and the Scottish Executive, March 2004.

[26] Apart from the BHS, the organizations that form the Equestrian Access Forum are not members of the BHIC. The EAF was set up in 2006 to enable the equestrian groups to 'speak with a single voice'. However, it does not receive any funding from the BHIC or any of its members or from any government body.

[26A] Margaret Linington Payne, presentation on improving riding access and off road riding, Sounding Board Meeting, 16 June 2004.

All the issues contained in the present document were highlighted in the responses:

- the recognition of riding as an urban as well as a rural activity
- the decline in riding access and places to ride in towns and cities and in rural areas
- the variation in levels of support for riding from local authorities
- the need to include riding in local development plans
- problems of getting to and from safe areas for riding
- the dangers of being forced to ride on roads with high volumes of traffic
- the need to record horse-related accidents and incidents on roads as a separate category
- the many problems with current off-road riding networks including legal, historical and physical barriers
- the need to upgrade rights of way and ensure routes join up
- the use of old railway tracks
- the value in the creation of new off-road routes
- a linked-up network of well-maintained riding routes in a safe and pleasant environment would give a genuine boost to equine tourism and the uptake of riding generally

'Out of an estimated 2.4 million riders [1999 statistic] the vast majority undertake riding for pleasure. Their needs should not be marginalised and must be a major consideration within the strategy.'

The *Strategy for the Horse Industry in England and Wales*, published in December 2005, identified the need to increase access to off-road riding and carriage driving as one of its main aims. In the following chapters we examine how this could be done.

Safe off-road access

PART 2
THE PROPOSALS

THE PROPOSALS

The proposals set out in the following chapters will dramatically improve equestrian access. Proposal 1 is the key principle on which the rest of the proposals are based.

Proposal 1 Access should be for everybody

The government should adopt the approach to access exemplified by the Land Reform (Scotland) Act 2003 in relation to public rights of way and access land.[27]

National and local government, government agencies and other access providers should adopt the advice of Richard Benyon MP, Minister for Natural Environment and Fisheries, to provide access for horse riders. In 2011, in a letter to Anne Main MP, he urged all local authorities to allow horse riders to use cycle trails, routes and any other ways where it is in their power to do so, and to encourage that permission or dedication to happen where it is not in their power. He stated:

'Unless there are good and specific reasons not to expressly allow horse riders to use such routes, local authorities should take steps to accommodate them. Local authorities should be making the most of their off-road networks through integration of use. Multi-user routes have been shown to be readily adopted and well appreciated by local people. Where they are done well they bolster community cohesion and create a better understanding between users.'

Mr Benyon stated further:

'Horseriders are particularly vulnerable road users, and cycle routes can provide appropriate and important opportunities to avoid busy roads. There is potential for conflict in any situation where people share a public space, but the possibility of conflict is not reason enough to disregard ridden access; actual conflict could be resolved and any misplaced concerns reduced over time.'

The late Sir Donald Thompson, when he was Calder Valley MP, leads the Calder Valley Driving Club on a newly restored inclosure private carriage road set out in 1816 (photo: SPPTT)

[27] **Scottish Outdoor Access Code:**

'1. Everyone, whatever their age or ability, has access rights established by the Land Reform (Scotland) Act 2003. You only have access rights if you exercise them responsibly.

'2. You can exercise these rights, provided you do so responsibly, over most land and inland water in Scotland, including mountains, moorland, woods and forests, grassland, margins of fields in which crops are growing, paths and tracks, rivers and lochs, the coast and most parks and open spaces. Access rights can be exercised at any time of the day or night.

'3. You can exercise access rights for recreational purposes (such as pastimes, family and social activities, and more active pursuits like horse riding, cycling, wild camping and taking part in events), educational purposes (concerned with furthering a person's understanding of the natural and cultural heritage), some commercial purposes (where the activities are the same as those done by the general public) and for crossing over land or water.

'4. Existing rights, including public rights of way and navigation, and existing rights on the foreshore, continue.'

Chapter 4 - THE LEGAL RECORD

Proposal 2 Repeal the cut-off date of 1 January 2026 and the extinguishment of unrecorded rights (Countryside and Rights of Way Act 2000, ss. 53-56)

The legislation bringing in the cut-off date is currently suspended while the government considers the report of the Stakeholder Working Group on Unrecorded Public Rights of Way as part of the Natural Environment White Paper.[28] The cut-off date and extinguishment of unrecorded rights would not be necessary if unrecorded rights were legally recorded. If they are not, imposing a cut-off date and the subsequent loss of rights will leave permanent gaps in the network. As already pointed out, unrecorded rights are the critical links between paths already on the map.

4.1 Unclassified Roads (UCRs)

Proposal 3 Record unclassified roads on the highway register as public carriageways

In 1998 the Countryside Commission recommended:

'Highway authorities should make the "hidden network" of unclassified roads fully available for public use. . . . These are essentially carriageways, but they are not managed as part of the modern roads network. They are not currently recorded on either road maps or definitive maps of rights of way, and are not therefore readily accessible to recreational users. However, they represent a tremendous potential resource, especially to riders, cyclists and drivers of horse-drawn vehicles.'

The fact that the vast majority of unclassified roads[29] carry vehicular rights is, perhaps, the reason that so many are 'hidden'. Some are now shown as ORPAs (other routes with public access) on Ordnance Survey maps, but that is not a clear and unequivocal definition. The proposed cut-off date will not apply to UCRs recorded on the list of streets. If, however, they are also recorded on the definitive map as bridleways or footpaths, any unrecorded higher rights over them will be extinguished.[30]

In 2000 the Department of the Environment, Transport and the Regions (DETR) estimated that it would cost £19 million for local authorities to add 6,000 miles (9,700 km) of UCRs to the definitive map on a case-by-case basis, plus a further £2.3 million to central government for public inquiries.[31] DETR gave no estimate of the length of time this task might take, but their estimate for recording 2,600 miles (4,125 km) of RUPPs on a case-by-case basis was 33 years, which suggests a time-scale in the region of 77 years for reclassifying UCRs.[32]

Over the years many unsealed UCRs have been silently removed from the list of streets without due legal process. However, they remain public carriageways that are maintainable at public expense. These 'hidden' roads need to be restored to the current list of streets.

In addition, since 1949 many unsealed UCRs have been added to the definitive map at the wrong status. These also should be restored to the highway register and removed from the definitive map.

The proposed solution of recording unsealed unclassified roads as public carriageways can be achieved by:

- accepting their vehicular status
- recognizing their recreational importance
- ensuring they are maintained in a way that is appropriate to their historical character
- integrating them with the rights of way network
- restoring to the list of streets those UCRs that have been wrongly removed, and

[28] '4.34 We will consult on simplifying and streamlining the processes for recording and making changes to public rights of way, based on proposals made by Natural England's working group on unrecorded rights of way. This will make it easier to claim public rights of way and to make changes to them in order to create a network that meets the needs of local people. As part of the Government's wider barrier-busting initiative, we will also work with stakeholders to tackle any barriers to local involvement caused by regulations or a lack of information' (Natural Environment White Paper).

[29] Unclassified roads are often referred to as unclassified county roads in county administrative areas and unclassified roads in metropolitan areas. They are recorded on the List of Streets by the Highway Authority as 'maintainable at public expense' and normally have vehicular rights.

[30] The rights for mechanically propelled vehicles have already been extinguished.

[31] *Improving Rights of Way in England and Wales: An Economic Appraisal of the Proposals*, DETR, August 2000, p. 17. The figures are for England and Wales.

[32] The estimates are based on length rather than the comparative numbers of UCRs and RUPPs, which would give a more accurate picture.

- implementing agreed management schemes to prevent damage by mechanically propelled vehicles

Unsealed unclassified roads could then be shown on Ordnance Survey maps as 'public roads'.

4.2 List of highways maintainable at the public expense (Highways Act 1980, Section 36(6))

Proposal 4 The list of streets to become a legal record of status

There is a pressing need for these lists:

- to be completed by the highway authorities
- to be set out in a prescribed format, and
- to state the correct status of each highway, including rights of way (of the type recorded on the definitive map)[33]

Regulations could be set out to ensure that the form and content of the list is uniform across the country. A short time-scale for completion could also be prescribed.

The regulations could also prescribe the administrative procedure to be followed by the highway authority for removing or altering an existing entry in the list. This would prevent publicly maintainable routes being removed from the list without a formal administrative procedure. The public should not have their rights removed from a public register by an uncontrolled action.

4.3 The Definitive Map

4.3.1 A single status for all public rights of way

Proposal 5 Adopt a single status for footpaths, bridleways and restricted byways

The quickest and easiest solution would be to amend the Wildlife and Countryside Act to make all paths recorded on the definitive map the one status, apart from byways open to all traffic and unclassified roads. The terms 'footpath', 'bridleway' and 'restricted byway' would be replaced by the term 'public path'. The public would have the right to pass over all public paths on foot, on horseback or leading or driving a horse, and on a bicycle. It would be up to the individual user to decide whether a particular path was passable or not, and there would be many paths whose accessibility would be limited by natural constraints.

Local authorities would have a duty to make all public paths usable by removing obstructions in line with the Equality Act 2010, and this should be done within a specified ten-year period.

Use of public paths would be in accordance with a Public Path Code (see further Appendix 4).

To be all encompassing the term public path should include cycle routes.

[33] An alternative would be to adopt the option set out under Proposal 5 below.

4.3.2 Completing the historical record

The following set of proposals would improve the present system of recording routes at a specific status, based on historical documentary evidence.

Proposal 6 Simplify the definitive map modification process to facilitate the recording of all public rights of way other than UCRs

Proposal 7 Carry out an independent review of the definitive map to ensure that all unrecorded rights are identified and recorded

Proposal 8 Adopt an automatic upgrade procedure for existing public footpaths and unrecorded paths to bridleway status on agreed documentary evidence

Where **one or more** specified categories of historical evidence show that public footpaths and unrecorded rights of way carry higher rights, the rights should be added to the definitive map by an automatic upgrade. This approach would short-circuit the present system by simplifying the evidential requirements and the process for recording bridleways and restricted byways.[34] It would also provide a standard for the interpretation of historical documentary evidence not just for this proposal, but for definitive map modification order applications under the 1981 Wildlife and Countryside Act.[35]

The automatic upgrade would apply to:

(a) existing public footpaths shown as such on

(i) the definitive map and statement, or

(ii) the Section 36(6) Highways Act 1980 list of highways maintainable at public expense,

and

(b) unrecorded paths

where the footpath or the unrecorded path falls within **one or more** of the categories set out in an agreed 'Schedule of Historical Evidence', full details of which are given in Appendix 5 Righting the Record.

Routes identified for upgrading would be recorded on a draft Unrecorded Rights Map, which would go out for public consultation. The next stage would be a provisional map to which landowners could object, but only on the ground that a route shown on the provisional map was not in fact shown on one or more of the designated documents in the Schedule of Historical Evidence. Once that process was complete, the surveying authority for the purposes of the 1981 Act would have the duty to add them to the definitive map and statement by simply recognizing the 'legal event'. A minor addition to section 53(3)(a) would be required to recognise the automatic upgrade.

[34] Restricted byway could be used as the default status, rather than bridleway. This would reflect the fact that most of the unrecorded rights are vehicular; there are very few bridleway-only routes around – the majority are old roads.

[35] These would be restricted to applications to add a right of way which did not fall into any of the categories in the schedule of historical evidence, and to upgrade an existing right of way to restricted byway. For applications to downgrade or delete a right of way, see Proposal 16 below.

In addition:

- Ways would be described by their termini rather than their current definitive map and statement numbers. This would (a) identify entire routes,[36] (b) remove anomalies where a route crossing between two parishes changes status at the boundary, and (c) ensure that each route terminated on a highway of the appropriate status.
- The existing system under the 1981 Act would remain in force to cater for applications to record ways currently not shown on the definitive map or where a way shown on the definitive map does not fall within any of the categories listed in the Schedule.
- A route that has been added to the definitive map via the automatic upgrade procedure would not be open to applications for downgrading or deletion. (See Proposal 16 below.)
- If brought into force, the cut-off date under the CROW Act would only apply once the automatic upgrade procedure had been completed for all highway authority areas.

4.4 Government Road Classification Database

Proposal 9 Make the information on road classification held by the Ordnance Survey available for completing the legal record of the list of streets and the definitive map

The information for GIS and SatNavs and for street gazetteers such as those published by the AA, the RAC, Multimap, etc., comes from a variety of sources: the Department for Transport major roads database,[37] local authorities, the former Government Offices of the Regions and the Ordnance Survey. This information is held by the Ordnance Survey and used to compile data sets for sale to the commercial map companies.

The DfT publishes the length of road statistics on their website. Currently, in their road classification hierarchy the lowest categories of roads are rural and urban unclassified roads (UR and UU). It is possible that unsealed unclassified roads do not appear in the tables, although the records for them do exist (see below).

'. . . data for minor roads are estimated from Ordnance Survey data, which is agreed annually with local authorities'.[38]

The recorded length and status of unclassified roads are currently under review, so this information might cease to be included in future data sets.

The current data sets include unsealed unclassified roads, some of which no longer appear on the list of streets, and public roads that are privately maintained. Private roads not used by the public are not shown.[39] See further, Appendix 6 Government Road Statistics.

It is instructive to compare a street map based on the OS data set with the definitive map. For example, the *AA Street by Street* for West Yorkshire, published in 2001, shows that many ways that have been recorded as footpaths or bridleways on the definitive map are in fact public roads. It also shows that many 'private' roads are actually public roads. Historical evidence suggests the street guide is correct. This means that many claims for restricted byways or bridleways are simply unnecessary: the roads are already public and are recorded on a database currently held by the Ordnance Survey on behalf of government agencies.

The national record of the public road network should be admitted as evidence of higher rights of way. At the very least, the information would be a major contribution to completing the legal record and is directly relevant to achieving Proposals 3, 4, 6–8 above. The definitive map process could be speeded up if all publicly maintained roads were added to the list of streets, while privately maintained roads were automatically shown on the definitive map as restricted byways.

[36] Some definitive maps number discrete links along the course of a right of way, dividing up what is in fact a continuous route into segments. When determining applications some order making authorities require the status of each link to be proved, rather than the whole route, encouraging the notion of discontinuous routes.

[37] This is based on ITN (the Ordnance Survey's Integrated Transport Network), having moved from OSCAR (the Ordnance Survey's Centre Alignment of Roads) in early 2006. Department for Transport, *Review of Road Traffic and Road Length Statistics*, National Statistics Quality Review Series, Report No.49, DfT, 2007, http://www.statistics.gov.uk/about/data/methodology/quality/reviews/downloads/RT&RL.doc.

[38] The Department for Transport, Road Length Statistics, 2006 and 2007. See: http://www.dft.gov.uk/pgr/statistics/datatablespublications/roadstraffic/roadlengths/

[39] 'Private major roads have been included in the major roads as these private roads (usually toll roads, tunnels or bridges) are accessible to the general public, whereas private minor roads (such as private country estates), not usually being accessible to the general public, are not included' (DfT, *Review of Road Traffic and Road Length Statistics*, para. 5.7.2).

4.5 Defending the Public Right

Historically, a right of way

'was not a strip of land, or any corporeal thing, but a legal and customary right . . . "a perpetual right of passage in the sovereign, for himself and his subjects, over another's land." . . . What existed, in fact, was not a road, but . . . a right of way, enjoyed by the public at large from village to village, along a certain customary course, which, if much frequented, became a beaten track. . . . it was "the good passage" that constituted the highway, and not only "the beaten track," so that if the beaten track became . . ."foundrous" the King's subjects might diverge from it, in their right of passage, even to the extent of "going upon the corn". Of this liberty . . . riders and pedestrian of the time made full use.'[40]

This liberty is being strenuously challenged. What is being advocated today, under the slogan 'New routes for modern needs',[41] is the abandonment of the public right, replacing it with a system of permissive, managed and commercially operated routes that are controlled by land owning interests. The historic network is to be abandoned, but there are no guarantees that it can or will be replaced by something 'better'. This is not a future scenario, but has been happening over a long period of time.[42]

The balance needs to be redressed in the interest of the public, and this can only be done by setting up independent bodies not subject to national and local political pressure. The remit 'to assert and protect the public right to the use and enjoyment of public rights of way' is a duty of the highway authority, but one that is not always asserted or protected. Transferring part of that duty to a dedicated independent body as its sole responsibility would remove the conflict of interests currently experienced by local authorities and government departments. This could be done by appointing an independent legal record authority (LRA) to complete the legal record.

Proposal 10 The creation of an independent Legal Record Authority (LRA) to be responsible for recording public rights of way

The duty of the legal record authority would be to ensure that all public rights of way are legally recorded. To achieve this, the LRA would work with members of the public and the local authorities to ensure that the list of streets and the definitive map were as complete and accurate as possible.

The legal recording of public rights of way needs to be carried out to an agreed standard across the country. At present there is inconsistency between local authorities in:

- the understanding and interpretation of historical documentary evidence
- the way applications are processed (some local authorities do not interview witnesses, for example, or carry out additional research)
- the time taken to process applications
- the method of determination – some authorities delegate the determination to officers, others consider applications in committee
- the degree to which members understand that the decision must be evidence-based and made on the balance of probability taking the evidence as a whole

There is a need to ensure that decisions are genuinely independent and free of political pressure. This applies whatever system is adopted for securing the legal record.

[40] Sidney and Beatrice Webb, *The Story of the King's Highway*, 1913; facsimile edition, Frank Cass & Co. Ltd, 1963, pp. 5–6.

[41] The needs being those of the land-owner and private property.

[42] 'In spite of the maxim "once a highway, always a highway" it is a fact that a very large number of rights of way are being lost through disuse. . . . Unless steps are taken before many more years elapse, these rights of way will be forgotten and lost for all time. We consider that it is essential that a complete survey shall be put in hand forthwith so that an authoritative record of rights of way in this country may be prepared before it is too late. To enable the record to be complete and expeditious, effective and economical means must be provided for resolving the legal status of rights of way which are in dispute' (Ministry of Town and Country Planning, *Footpaths and Access to the Countryside*, 1947).

4.6 Ensuring Quality Control

Proposal 11 The government to appoint an independent Rights of Way Commissioner to oversee how local authorities carry out their rights of way functions, particularly in relation to equestrian access

Where a local authority fails to carry out its statutory duty, it falls to a member of the public to make a complaint. This will usually be about a specific problem, which may often be an example of a much wider failure. Unless one is part of the rights of way community, it is difficult to know whether a highway authority's response is reasonable or evasive. Some authorities may have in place a range of strategies to avoid being forced to take action in a particular case: a set of priorities, for example, for the removal of obstructions or for processing definitive map modification applications. The complainant is then told that the specific problem is 'not a priority', irrespective of the fact that it is a statutory duty.

In addition, each authority is required to produce a Rights of Way Improvement Plan (ROWIP), which is also often used as a reason for not taking action over a specific complaint on the ground that it does not fall within the ambit of the ROWIP. Applying to the Secretary of State for a directive to the surveying authority to determine a modification order application, or serving a section 130(a) notice on the highway authority for the removal of an obstruction, or making a complaint to the Local Government Ombudsman is all very well, but it should not have to become a way of life. In addition, the 'priority' system often covers up a huge backlog of unresolved problems. In such cases there is clearly a failure on the part of the authority to carry out its statutory duties.

The only way to tackle the problem is an independent scrutiny of highway authorities' performance. This need to be done by a body, acting on behalf of the public, with specialist knowledge of public rights of way administration, and a remit to secure improvements in the performance of failing authorities.

Riding through the car park at Stretton Hills, Church Stretton, Shropshire

Chapter 5 - EXTENDING THE STATUTORY NETWORK

If proposals 1–11 were adopted, the number of user claims and the need for creation orders would be markedly reduced. In effect, they would only be required for historical routes for which there was little obvious documentary evidence, and for new routes to fill the gaps in the network. User claims are a natural way of identifying the critical missing links in the historical network, and should be treated as evidence of public need.

5.1 Simplify User Claims

Most claims for bridleways are based on user evidence under the Highways Act 1980 s. 31 (20-years user). Gathering evidence forms and submitting an application are, however, fraught with hidden pitfalls, and many people, having done it once, are not prepared to do it again.

First, there is the sheer difficulty of collecting forms that contain clear and coherent user evidence. It involves tracing riders, ensuring they know exactly which route is being claimed, ensuring they were using it as of right, and trying to find people that used it in the past. Some claims then linger for several years before being assessed by the local authority, by which time the ground rules have changed so that the evidence forms are no longer deemed to be adequate, and witnesses have to be asked to fill in forms all over again.

Then they may have to face hostile cross-examination at a public inquiry by a solicitor or barrister acting for the landowner, which can be an extremely daunting and upsetting experience.

Finally, the length of time taken by some local authorities to look at a claim is simply unacceptable: 10–15 years is not uncommon. User claims are more ephemeral than claims based on historical evidence. Witnesses cease to ride and lose interest, or they move away, or they die. This means that the older the evidence forms the less likely the claim is to succeed.

A user claim is normally occasioned by use of a way being called into question, for example, by an obstruction. The fact that the way was being used prior to that demonstrates that it fulfils a public need. Therefore it is important that the challenge to its use and the subsequent claim are dealt with as quickly and fully as possible.

Proposal 12 Where use of a way has been called into question, the local authority is required to collect evidence of use and interview witnesses

This is normally done by a member of the public in a voluntary capacity. However, forms may subsequently be rejected because witnesses do not fully understand what information is required or the person collecting the evidence forms is not fully aware of the implications of the questions. If evidence forms were collected by the local authority, these pitfalls should be avoided.

Proposal 13 User claims should be determined within 12 months

This measure would ensure that witness evidence was considered while it was still fresh. Together, proposals 12 and 13 would ensure that evidence was as robust, accurate, relevant and up-to-date as possible, and the witnesses' evidence had been independently verified.

[43] This proposal comes from the BBT Equestrian Access Action Plan.

Proposal 14 Limit the right of objection to a user claim to the owner(s) of the land crossed by the claimed way

Proposal 15 Require landowners who object to a claim to produce evidence of title to the land crossed by the claimed way

The presumption in user claims is that a right of way is dedicated by the landowner and accepted by the public. Evidence of use is presumed to be evidence of dedication on the part of the landowner, unless the landowner can demonstrate that he had no intention to dedicate the way (see further, Highways Act 1980, s. 31). However, even where a landowner does not object to a user claim over his land, third parties can and do object to orders on non-evidential grounds. This practice needs to be stopped. Such objections cannot be valid, and are often lodged on behalf of pressure groups which have a blanket policy of objecting to all higher rights.

Proposal 16 Applications to delete or downgrade a public right of way only to be made in specified cases by the landowner, who must produce title to the land

An immediate cut-off date should be introduced for applications for downgradings or deletions. A landowner who has purchased land crossed by public rights of way should be deemed to have accepted the existence of those public rights of way at time of purchase. Only existing applications by landowners who owned land prior to the relevant date of the definitive map on which the public right of way was first recorded should be determined.

A similar situation occurs where a new tenant applies to downgrade/extinguish a public right of way although the landowner has no objection to its status/existence. If the tenant accepts the lease, he should be deemed to have accepted the public rights of way across the land in question.

Proposal 17 Presumed dedication on the basis of 20 years' use of a way at any time before the way was called into question

The Highways Act 1980 s. 31 restricts user evidence to a 20-year period immediately prior to the date when the route was first called into question. The law needs to be more flexible. The use of the way should not have to be restricted to a single discrete period. Intermittent use over a longer period should be considered, as long as the total number of years' use by the public adds up to 20. Interruption of use is not evidence that a right of way does not exist.

5.2 Alternatives to User Claims

The next two proposals treat evidence of use as evidence of public need, which then triggers a creation order.

Proposal 18 Replace user claims with creation orders

This would require a system whereby a genuine period of long and/or significant user merits a creation order on the grounds of it being evidence of public need. This might involve compensation to the landowner, but if people have regularly used a route over a number of years, the compensation should not be great.[43]

Proposal 19 Creation orders consequent on 10 years' use of a way

Where there is evidence of use of a way for a period of 10 years, as of right and without interruption, the discovery of such evidence would trigger a duty upon the local authority to make a public path creation order under section 26 of the Highways Act 1980. This duty would recognise that public need based on credible evidence of use has arisen, and that a creation order ought to be made to ensure that the need for the way resulted in a permanent right for the public. Any affected landowner would have a right to claim compensation.

5.3 Dedication

Express dedication and the use of dedication agreements are the simplest ways of creating new public rights of way. They can be used for a completely new route or to add higher rights over an existing route. Dedication is rarely used by local authorities and in recent years has been undermined by the compensation culture, which has led landowners to expect some form of payment for agreeing to a new right of way. Voluntary organizations – for example, the Trails Trust and the South Pennine Packhorse Trails Trust – have been successful in negotiating dedication agreements. Voluntary organizations and user groups are not subject to the constraints imposed on local authorities; they do not have the drawback of being seen to be 'official', and can agree immediate and pragmatic solutions with the landowner. Many local groups are prepared to raise funds for new gates, fencing, drainage, etc., which benefit both landowner and users. In some cases the landowner prefers to carry out the necessary accommodation works himself and can be paid as a contractor. This reduces the set-up cost, ensures that the landowner completes the work to his own satisfaction, and reduces the liability of the voluntary organization.

Proposal 20 Government, other agencies and local groups should encourage landowners to dedicate public rights of way

5.3.1 Dedication under Highways Act 1980, Section 31(6)[44]

This section of the Highways Act is primarily intended to protect landowners from claims arising from deemed dedication following 20 years' use without let or hindrance. However, subsection 6 is an extremely simple way for a landowner to dedicate a public right of way.

'An owner of land may at any time deposit with the appropriate council –

(a) a map of the land on a scale of not less than 6" to 1 mile, and

(b) a statement indicating what ways (if any) over the land

'he admits to have been dedicated as highways.'

Under this option:

- no compensation is payable
- no limitations can be placed upon the use of the public right of way
- for the path to be maintainable at public expense further action under the Highways Act 1980, s.37 or s.38, is required
- acceptance by the public is required
- the highway authority should record the route on the definitive map and statement (see below)

[44] This information comes from *Creation of new public rights of way: A code of practice for local highway authorities and landholders involved in negotiating compensation,* Natural England and the Countryside Council for Wales, 2005. Available as a download on the Ramblers Association website http://www.ramblers.co.uk/rightsofwaybook/chapter7/, page 225.

5.3.2 Encouraging dedication by statutory declaration

Proposal 21 Dedication of all or part of a path to be included on the register of statutory declarations

Local authorities now have a duty to keep a register of statutory declarations together with the relevant maps.[45] However, it is evident that local authorities are being advised only to publish declarations by landowners to the effect that they have no intention to dedicate further rights of way.[46] So when a landowner lodges a statutory declaration that he has dedicated a bridleway, for example, rather than this being recorded on the register, the surveying authority simply ignores it or pursues the legal alternative of a creation agreement.

Landowners can put on public record their intention not to dedicate higher rights, even if they only happen to own a very small part of the land over which the path in question runs. This immediately fixes a date on which unrecorded rights have been brought into question. This action is capable of having a negative legal consequence years after the declaration was made, even if it is not renewed.

On the other hand, unless they own the entirety of the path, landowners who wish to dedicate bridleway rights, and to have that intention put on public record, are being denied the opportunity of using this simple way of doing so.

It must be remembered that landowners wishing to dedicate bridleway rights may not be bridleway users themselves. They may simply wish to do the right thing by legally acknowledging usage that has been going on for many years. Asking them to become involved in the more complicated process of securing a creation agreement over their neighbour's land can be a significant deterrent.

Were local authorities to include on their registers all paths, or parts of paths, over which higher rights have been dedicated by the owner, this would record their intention to dedicate which at present is simply being ignored.

Under the present system, local authorities are gradually building up a record negating rights of way, whilst simultaneously the system actively deters dedications and fails to put them on public record.

The relatively simple statutory declaration process would encourage more dedications and properly record current usage which otherwise might subsequently be lost because the records are silent. The information would also be publicly available to bridleway user groups, who may wish to pursue claims to upgrade the status of the paths.

5.3.3 Express dedication at common law

The legal basis upon which a highway comes into existence at common law is dedication by the landowner and acceptance by the public. The landowner lays out the route or causes the route to be laid out and throws it open for public use. The dedication process is complete when the public use the route (acceptance by the public). Thus a new public path (highway) has come into being – this constitutes a legal event and the highway authority has a statutory duty to record the route on the definitive map and statement.

[45] An amendment was made to the Highways Act 1980 Section 31 under the CROW Act 2000 (now Statutory Instrument No. 2334, which came into force in October 2007 – The Dedicated Highways (Registers under Section 31A of the Highways Act 1980) (England) Regulations 2007, http://uklaws.org/statutory/instruments_37/doc37625.htm).

[46] Practice Guidance Notes PGN2, http://www.iprow.co.uk/docs/uploads/pgn2.doc

Proposal 22 Landowners and voluntary organizations to have the right to apply for a legal event order consequent on express dedication or dedication by agreement

One problem encountered by voluntary organizations that have negotiated a dedication agreement with a landowner is refusal by the local authority to make a legal event order to add the new right to the definitive map. The only alternative is to submit a definitive map modification order application, but this opens up the possibility of third-party objections to a process that is basically done and dusted and legal.

5.4 Creation

Creation of new public rights of way is often put forward by land managers as a quicker and easier solution than completing the historical record. This is not the case. The speed and success of a creation agreement is entirely dependent on the landowner and his advisers, and there is no way of moving the process forward if negotiations stall.[47]

In addition, local highway authorities are reluctant to create new public rights of way primarily from the uncertainty over compensation and the lack of dedicated funds for this purpose. Historically, only about 1 in 10 creations have involved any compensation payment.[48]

Proposal 23 Publish a standard scale of compensation for creation orders

In order to remove doubt and uncertainty and to assist both local authorities and landowners in creating new rights of way, the government should publish a schedule of compensation payable by the local authority. A prescribed schedule of rates for different types of land, including different types of agricultural land, would help to remove much of that uncertainty and would encourage greater use of the powers by local authorities.

The schedule should be set out by the Secretary of State and provide for an easy assessment of compensation. An addition could be made to the 1983 regulations (SI 1983 No. 23).

Proposal 24 Create a statutory definition of 'demonstrable public need'

Proposal 25 Members of the public to have the right to apply for a creation order where there is 'demonstrable public need'

Local authorities may make a creation order where it considers there is a public need for one (Highways Act 1980, s. 26). However the term 'public need' is not defined. Landowners talk of 'modern needs' without explaining exactly what that means. The most important need is to provide safe access.

It should be a statutory requirement for a creation order to be made where it is in the interests of public safety to provide an alternative route that obviates the need to use motor roads. At present this is only one of eleven criteria listed in Defra guidance on Rights of Way Improvement Plans. This criterion should also apply when determining diversion orders, applications based on user evidence, planning applications, and prioritising public rights of way department workloads.

[47] For a detailed analysis of creation procedures, see *Creation of new public rights of way: A code of practice for local highway authorities and landholders involved in negotiating compensation,* Natural England and the Countryside Council for Wales, 2005.

[48] 'Riddall and Trevelyan (2001) record that, in the fifteen years 1986–2000, 1,117 section 26 creation orders and 771 section 25 creation agreements were made under the Highways Act 1980 (HA80). This is equivalent to less than one of each type of creation per LHA per year. These figures also suggest that more new paths are created by order than by agreement. However, consultation responses show that many orders are made in conjunction with HA 1980 s118 extinguishments as part of a path diversion, often to circumvent the restrictions of s119. A significant number of orders are also made because no landowner has come forward or could be identified, ruling out the possibility of a creation agreement.
'Responses to background research for this code show that of the responding LHAs in England and Wales, only about 10% of creation orders they made invoked any form of compensation payment' (*Creation of new public rights of way*, p. 8).

Chapter 6 - ACCESS TO OPEN LAND

Exploring open land

'Mr. Meacher: . . . Of course we want to see improved access for horse riders and cyclists but . . . what I am announcing today is specifically for those who walk on foot and wish to enjoy open-air recreation. Horse riders and cyclists will have their day, but that will be separate from what I am announcing today.'
(*Hansard*, 8 March 1999, Column 28)

'There is nothing in this Bill for horse riders and cyclists. They will just have to wait.'
(Pamela Warhurst , Deputy Chair of the Countryside Agency, 14 July 2000)

6.1 The CROW Act 2000

In 2000 the Countryside and Rights of Way Act gave the public a right of access on foot to mountain, moor, heath and down (the right to roam). Access for equestrians was excluded from the legislation. This has had an adverse effect on existing equestrian access to open land.

6.2 Common land[49]

For centuries the travelling public has enjoyed the freedom to pass over uninclosed uncultivated land, both common land and manorial waste, on foot, on horseback, with pack horses and in horse-drawn vehicles. Until the advent of canals and railways, these were the only modes of overland travel. However, in the 21st century horse riders are rapidly losing this freedom – the result of discriminatory legislation, lack of management and, more recently, management regimes that take no account of equestrian access.[50]

The freedom to ride on horseback over urban commons was preserved under the Law of Property Act 1925, section 193. This Act granted the public a statutory right of 'air and exercise' on foot and on horseback over commons and manorial waste wholly or partly in urban and metropolitan districts.

However, despite opposition, the 1925 Act removed the ancient freedom to wander on foot and on horseback over rural common, thereby restricting all forms of access to public rights of way. The public right to wander on foot over rural common was reinstated by the CROW Act 2000.

In 1965 the Commons Registration Act required local authorities to compile commons registers to record all manorial waste not subject to rights of common and all land over which rights of common were still being exercised. Under the Commons Act 2006 the registers are being re-opened from 2010 to at least 2017 to allow corrections to be made.[51] It will be possible to add previously omitted commons to the registers, which could be beneficial to horse riders. However, some commons may well be deregistered, thereby removing the public right of air and exercise over them. Many of these will then be designated as access land under the CROW Act 2000, which will restore the public right of access on foot. The right of access on horseback is not covered by this legislation.

[49] Common land is land over which specified individuals (known as commoners) share ancient rights in common – the right to graze animals, for example, or to take turf. The commoners do not own the common, however. All common land belongs to somebody, but not all the owners of commons are known. In such cases the title is vested in the public trustee.

[50] Historically the public could cross common land and manorial waste in all directions. 'Many of those persons who reside in the vicinity of wastes and commons, walk or ride on horseback, in all directions, over them, for their health and recreation; and sometimes even in carriages, deviate from public paths into those paths which may be so traversed safely' (Abbott C. J., *Blundell v. Catterall*, 1821, 5.B.& Ald. R. 268; SC 7. ENG. C. Law R 91, p. xxxix).

Although there was no written law actually sanctioning this access, neither was there a law that prevented it: 'Practically, while a common is open to the public to wander over it at will, there will be no criminal procedure for trespass, and no damage upon which to found a civil action can be shown; but the public cannot set up a right of wandering to prevent inclosure' (Sir Robert Hunter M.A., *The Preservation of Open Spaces and of Footpaths and Other Rights of Way*: A Practical Treatise on the Subject, 1896).

[51] Commons registers and the accompanying maps are held by the land charges section of the local authority and are available for public inspection.

6.2.1 Urban common (Section 15 land)[52]

There are 398,414 hectares of registered common land in England (about 3% of the total land area),[53] of which some 183,000 hectares (300,000 acres) are urban common. The distribution of urban commons varies around the country. The north of England has a large number of upland urban commons, for example, Cumbria (26), Lancashire (35), and the South Pennines, including Bradford (42), Calderdale (25) and Kirklees (34). In the northeast, Newcastle has 24 and Gateshead 20. In the south, Kent has 28 urban commons, while Surrey boasts 174, and in the southwest Cornwall and Devon have 31 and 46 respectively.[54]

Apart from definitive rights of way, the only statutory right of access for equestrians is the right of air and exercise on urban common. However, unlike public rights of way, there is no statutory body that has a general duty to assert and protect the equestrian right of access to urban common. Many routes leading onto common land are currently unrecorded or only recorded as footpaths, and are obstructed to horse riders.

There are no commercial maps that identify urban common. The OS Explorer maps show urban common as part of CROW access land. However, Defra's MAGIC website now distinguishes urban common from access land.

Proposal 26 Urban common to be signed by the local authority and shown on Ordnance Survey maps

Proposal 27 The right of air and exercise on horseback over urban common to be included in all relevant government guidance

Urban common is not access land and is not subject to the restrictions that can be imposed on access land. However, the failure to treat urban common as a separate category in its own right is causing problems for horse riders. In the process of opening up CROW access land, some authorities have erected stiles or narrow gates at points leading onto urban common, facilitating access on foot, but in the process preventing access on horseback. In addition, the signs used to indicate CROW access land (a brown walker on a white background) have also been erected on urban common, sending out a totally misleading message. Lack of definitive status or paths wrongly defined as footpaths leading onto urban common allow them to be made inaccessible for horse riders. Locked gates preventing unlawful vehicular access also prevent lawful equestrian access.

Proposal 28 Government, local authorities, and Natural England to provide, assert and protect equestrian access to commons

Rishworth Moor is urban common, but the sign and the notice wrongly indicate that is it CROW access land, suggesting that the rights are limited to people on foot.
The walled lane leading onto the common has no definitive status. The fieldgate is chained and padlocked, and the side gate is too narrow for horses (photo: SPPTT)

[52] Here 'urban common' is being used as a catch-all term for what is now called Section 15 land (i.e. land listed in section 15 of the CROW Act). Section 15 includes:

- land subject to s. 193 of the Law of Property Act 1925, i.e. urban common, metropolitan common and rural commons with a deed of declaration
- areas covered by a scheme under the Commons Act 1899 or where a local or private Act gives a right of access
- areas where an access agreement or order under the National Parks and Access to the Countryside Act 1949 applies
- areas to which s. 19 of the Ancient Monuments and Archaeological Areas Act 1979 applies

The Law of Property Act, 1925 s. 193 covers 'land which is a metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898, or manorial waste, or a common, which is wholly or partly situated within an area which immediately before 1st April 1974 was a borough or urban district, and to any land which at the commencement of this Act is subject to rights of common and to which this section may from time to time be applied in manner hereinafter provided.'

There is no right 'to draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle, or to camp or light any fire' on urban common.

[53] 'This figure does not include the New Forest, Epping Forest, or certain other commons exempted from registration under the Commons Registration Act 1965. These exempted areas account for a further 25,470 hectares of common land, making a total of 399,040 hectares of common land in England' (Defra website, http://www.defra.gov.uk/rural/protected/commonland/about.htm).

[54] This includes Dartmoor, where the access rights are granted in the Dartmoor Commons Act, 1985.

6.2.2 Rural common

Prior to the passing of the Law of Property Act in 1925, many commons in rural districts were still widely regarded as part of the uninclosed waste of the manor, and the beaten tracks that crossed them were presumed to be rights of way open to all. Although the public's right to roam over rural common was removed by the 1925 Act in the interests of game shooting, the public rights of way across the land remained. However, subsequently, due to the inadequacies of the definitive map process, many of these paths have not been properly recorded and, as a consequence, are no longer available to horse riders. The same applies to former rural and urban commons that were withdrawn from the 1965 register because no rights of common were found to exist over them at that time.

Gorbeck Road, now part of the Pennine Bridleway, crossing Marsden Moor (photo: Didy Metcalf)

Proposal 29 The maps and registers of all common land to be made available online by the registration authority

Proposal 30 Routes leading onto and over common land to be recorded as bridleways or restricted byways respectively, and gated and signed appropriately

Proposal 31 Linear paths over unregistered commons (including those that were withdrawn from the register) and manorial waste should be presumed to be restricted byways

The CROW Act has restored the right to roam on foot over rural common that has been designated as access land, but has not reinstated the right to roam on horseback. This lack, compounded by the failure to record the public roads and bridleways that ran across the commons, means that horse riders are now faced with a twofold loss of access.

6.2.3 Rights of way crossing common land

For walkers, the CROW legislation has also completely eliminated the need to claim linear paths over access land as definitive rights of way. In contrast, claiming unrecorded bridleways and restricted byways crossing open land is a complicated legal process, made more difficult by the lack of key documentary evidence:

- By definition, inclosure awards do not exist for land that has not been inclosed, a process that required the setting out of public roads and other rights of way.
- The early county mapmakers tended to show only the main roads – the roads that were usable by carriages – crossing open ground.
- Tithe maps were only concerned with the productive land on which tithes were paid and therefore rarely included commons and waste land.

Finding the key evidence that will satisfy a modern-day public inquiry has become a virtually unattainable goal.

Proposal 32 Review the level of evidence required to claim bridleways and restricted byways crossing access land and urban common

6.3 Open Access

6.3.1 Access land

The CROW Act 2000 created a new category of land, called 'access land', over which there now is a statutory right to roam on foot. The access land designation applies to open country, specifically to mountain, moor, heath and down, and registered common land other than urban common.

The only animal that can be taken onto access land is a dog.[55] The consequences for all those people who have always ridden on horseback over open country have been completely ignored. The rights of walkers (with or without dogs) are protected, while everyone else's rights are not.

Proposal 33 Remove the restriction on taking horses onto access land currently imposed by Schedule 2(1)(c) of the Countryside and Rights of Way Act 2000

This proposal is fundamental to restoring and protecting equestrian access to open land and to the foreshore.[56]

6.3.2 CROW restrictions

The CROW Act guidance contains no requirement for equestrian rights of way to be identified and protected before blanket restrictions are imposed on access land. As a consequence, equestrian use of those paths is likely to be interrupted. In turn, any interruption of use renders paths more difficult to claim as rights of way through long and unchallenged use.

Proposal 34 Before any CROW Act restrictions are imposed or reviewed, the relevant authority should be responsible for ensuring all unrecorded equestrian rights have statutory definition

Proposal 35 Provisions must be put in place to speed up the modification order process for paths leading onto or crossing access land and open land

6.3.3 The lack of protection for traditional equestrian access

The government's current stance acknowledges that equestrians enjoy widespread, traditional access to access land, but gives no indication of how to identify or protect that access. What were formerly considered to be common-law rights are now merely *'de facto'* usage that takes place without legal right or permission.

[55] **Crow Act 2000, Schedule 2 Restrictions to be observed by persons exercising right of access**
'1. Section 2 (1) does not entitle a person to be on any land if, in or on that land he . . . '(c) has with him any animal other than a dog . . .'
For the full list of the restrictions, see Appendix 8.

[56] This can be done by an affirmative resolution. See section 6.4.7 below.

The government's 2007 statutory guidance to relevant authorities defines *de facto* access as follows:

'*De facto* access is public access of any kind that takes place without any legal right or formal permission to use the land. It is relatively widespread on open country and registered common land, and is often founded on long-standing traditions. Some of the recreational and other activities that are known to take place *de facto* on some access land are not covered by the CROW rights. The owner will often continue to tolerate such additional uses, but remains free (as before CROW) to withdraw such tolerance. Doing so does not require any use of CROW restrictions.'[57]

Clearly, any policy changes to Natural England's management approach could have a severe impact on the quantity and quality of equestrian access. Any undefined access needs to be properly addressed as it is constantly being challenged. In addition, the introduction of conservation grazing schemes is resulting in the fencing of many open and uninclosed commons, often with the result that horse riders are being excluded from those commons where they have a statutory right to ride.

[57] *Public Access to the Countryside under Part 1 of the Countryside and Rights of Way Act 2000: Statutory guidance to relevant authorities on their functions in relation to local access restrictions,* Natural England, November 2007, Annex B, p.149, para. B.2.2. This guidance note is currently under review. The consultation closed on 4 August 2009.

Ancient highway crossing urban common: bridleway to gate, footpath thereafter

Winter's day on the foreshore, Seaton Carew, Hartlepool (photo: Abigail Hogg)

6.4 Coastal Access

Riding or driving a horse on the seashore is a much prized activity, both for those who live in easy reach of the coast and those who live inland. A trip to the beach is an annual event for many riders, with friends clubbing together to hire a horsebox and driver for a day by the sea.

6.4.1 The rights issue

In the early 1820s it was generally understood that the public had from time immemorial[58] enjoyed unchallenged access to the seashore and foreshore not only on foot, but also on horseback and with horse-drawn vehicles.

However, in 2005 the Countryside Agency advised Jim Knight, at that time Minister for the Horse, that there was no public right of access to the 'coastline'.[59] The Agency based this on the case of *Blundell v. Catterall* 1821 (see Appendix 9), in which it was decided that there was no common-law right to bathe in the sea at Great Crosby, using a commercial bathing machine.[60] However, this decision only applied to this particular stretch of foreshore,[61] which was part of the manor of Great Crosby.[62] The Countryside Agency's reliance on *Blundell v. Catterall* as a legal precedent for the whole of the English coast is therefore open to question.[63] Far from establishing a precedent, it seems, rather, the decision in this case was the exception that proved the rule.[64]

6.4.2 The exclusion of horses

The Marine and Coastal Access Act 2009 gave the public a statutory right to do something they had always done quite naturally: go down on the beach and paddle in the sea. This statutory right, however, has not been extended to horse riding or carriage driving.

Government policy that coastal access should only apply to walkers had been decided in 1999,[65] before the CROW Bill was drafted. There appears to have been a deliberate political decision to place horse riders in a separate category from the rest of the public, even though they had hitherto enjoyed the same freedom of access to the coast.

In the run-up to the Marine and Coastal Access Act, the government and the Countryside Agency claimed that the new right of access was to be for 'everyone'.[66] They did not appear to see any inconsistency between this claim and the decision not to extended a statutory right of access to horse riders.[67]

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[58] 'Time immemorial' means time beyond legal memory, i.e. before the accession of Richard I on 6 July 1189. Since that date, proof of unbroken possession or use of any right made it unnecessary to establish the original grant.

[59] 'Improving Coastal Access: an update', Countryside Agency board paper AP05/25, p. 2. The term 'coastline' has no legal definition.

[60] '*Blundell v. Catterall* … is important, as deciding that the public have no right, by the common law, to pass over a part of the shore of the sea, which is owned by an individual, for the purpose of bathing; and it is the first and only case in which that right was ever made the subject of controversy' (Joseph K. Angell, *A Treatise on the Right of Property in Tide Waters and the Soil and Shores Thereof*, second edition, Boston: Charles C. Little and James Brown, 1847, p. iv. The full report of *Blundell v. Catterall* is included in this work).

[61] 'The only portion of the beach and shore which has a legal definition and over which special rights obtain is the foreshore. . . .' (*Footpaths and Access to the Countryside*, Report of the Special Committee (England and Wales), Ministry of Town and Country Planning, 1947, Cmd. 7207, para. 204). The committee was chaired by Sir Arthur Hobhouse.

[62] Great Crosby had been granted as a submanor in time immemorial under the feudal process known as subinfeudation. In such cases, the rights and obligations that attached to the land could not be enforced by the tenant in chief, the original holder of the land. To remedy this, the statute of *Quia emptores* was introduced in 1290, whereby land remained subject to the rights that originally attached to it no matter who owned it.

[63] '. . . the question really is, whether there is a common law right in all his subjects to [bath in the sea, and to pass over the seashore for that purpose, on foot, and with horses and carriages] *in locus quo,* though the soil of the sea-shore, and an exclusive right of fishing there in a particular manner (namely with stake nets), are private property belonging to a subject, and though the same have been a special peculiar property from time immemorial' (Holroyd J., in Angell, Appendix I, pp. xvii–xviii).

[64] The four judges who heard the case – Judges Best, Holroyd, Bayley and Abbott – each gave his opinion 'of the relevant general principles of law . . . of the right of property in tide waters, . . . and a learned review of the early authorities, by which those principles were first established. The want of unanimity in the opinions of the judges gives to it an additional interest' (Angell, p. iv).

In 2006 the Countryside Agency stated:

'It is fully recognised that other recreational activities take place on the coast e.g. horse riding on beaches. **It was not written in the remit given to the Natural England Project Group by Defra to specifically include consideration of higher rights** [our emphasis]. However:

- nothing suggested will take away any existing rights for such activities
- all of the options access delivery mechanisms considered allow for provision of higher rights
- Defra may ask for further consideration of this aspect at a later stage.'[68]

None of the bullet points guarantees the recognition, preservation or extension of existing rights.

As the government did not consider horse riders to be stakeholders in the consultation process,[69] the representative equestrian bodies were not invited to give evidence to either of the two parliamentary committees scrutinizing the Bill: the EFRA Select Committee on Coastal Access Provisions and the Joint Committee on the Draft Marine Bill.[70]

6.4.3 The case for inclusion

In June 2006 a 'nationally representative sample of 1,741 English residents' were interviewed as part of a study on coastal access carried out by Ipsos MORI for the Countryside Agency. This reported that '2% of English people state that they have ridden a horse along the coast in the last year. Those riding horses by the coast seem to come from a variety of ages and backgrounds.'[71] Two per cent of the English population works out at a million people, equal to the population of Birmingham.

Support for the inclusion of horse riding in the coastal access provisions in the Bill came from the main recreational organizations,[72] who issued a joint statement 'Sea Change for the Coast' on 14 February 2007. According to the press release:

'A coalition of Britain's leading outdoor organisations is calling for Natural England to recommend ministers to introduce a permanent, multi-user, right of access around England's beautiful coastline. The Natural England board meets in Sheffield on 21 February to thrash out its policy on coastal access.'

However, a 25-page report 'Improving Coastal Access' submitted to the Natural England board in February 2007 mentions horse riding only once:

'Improved provision for horse riding, circular walks, new routes to the coast from inland, and easy access for all trails could all be prioritised at the local level.'[73]

In other words, horse riders were not significant enough as a group to warrant inclusion in the coastal access legislation.

In May 2007 Defra published the Asken report into coastal access.[74] This noted that

- there were no reliable data on the current use of coastal paths and beaches for riding
- the popularity of horse riding on many beaches around the country,[75] and
- the possible disadvantage to equestrian access of promoting a statutory access on foot only.

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[65] 'The Countryside Commission board advised the government on 22 November 1999 that "there is a strong case for a new statutory right of access on foot to uncultivated and undeveloped coastal land . . ." ' ('Improving Coastal Access', p. 2).

[66] 'The proposed framework for assessing options for coastal access . . . reflects and builds on . . . **six criteria: the extent of access; the quality of access; permanency; clarity and certainty; costs; and monitoring and enforcement.** However, we have added a further criteria to ensure consistency with the aim of Defra's Five Year Strategy that **everyone should have good opportunities to enjoy the natural environment**' ('Improving Coastal Access', Annex 2, p.8).

[67] In the Land Reform (Scotland) Act 2003 the word 'everyone' is inclusive. In England, by contrast, the terms 'everyone', 'everybody' and 'all' do not include horse riders.

[68] 'Open Access: Options for improving coastal access in England', Countryside Agency Board Paper AP06/20, Annex 6.

[69] 'Key national stakeholders' were 'the Crown Estate, the two Duchies, the National Trust, the National Farmers' Union, the CLA and the Ramblers' (ibid.).

[70] Select Committee on Environment, Food and Rural Affairs, Ninth Report. Draft Marine Bill: Coastal Access Provisions, House of Commons, 14 July 2008; and the Joint Committee on the Draft Marine Bill, Report, 30 July 2008.

[71] Ipsos MORI, *Coastal Access in England: research study conducted for Natural England*, April–May 2006, p. 64.

[72] The Ramblers' Association, the British Canoe Union, the British Mountaineering Council, the British Caving Association, the CTC, the Central Council of Physical Recreation, the Equestrian Access Forum, the International Mountain Biking Association UK and the Open Spaces Society.

[73] 'Improving Coastal Access', Natural England Board, 21 February 2007, NEB P07 03, para. 7.5.

[74] Asken Ltd *et al., Appraisal of Options to Improve Access to the English Coast*, Defra, May 2007.

[75] 'Horse riding is a well-established customary activity on some beaches. Wide expanses of smooth sandy beaches are favoured as these allow riders to gallop in relative safety. The British Horse Society website lists beaches on which it is possible to ride (even if not as of right). There may also be informal use of beaches for horse riding' (Asken, para. 12.3.1).

As a way of limiting that damage, the Asken report recommended that:

'the opportunity could be taken to extend access rights for horses to foreshores and beaches, thereby making a wider range of such areas available for horse riding.'[76]

These recommendations were ignored.

In 2008 the chairman of the Rights of Way Review Committee, John Grogan, wrote to Jonathan Shaw, then Minister for Marine, Landscape and Rural Affairs, expressing the committee's concerns that access to the foreshore for equestrians would be lost when a statutory right of access on foot to the coast was introduced.

'There is no mechanism for safeguarding historic, customary rights to use the foreshore in the draft Marine Bill. Members heard that Natural England failed to identify this customary access in its preparatory work even though the British Horse Society has compiled a list of areas accessed by equestrians' (letter of 10 July 2008, RWRC paper 0834).

Huw Irranca Davies, Jonathan Shaw's successor at Defra, replied:

'I can assure you that . . . the introduction of a new right of access to the English coast will not affect any existing rights or permissions to ride a horse on the foreshore. In other words, if people are currently allowed to ride on the foreshore they will still be able to do so when the new right comes into force. However, as you will be aware, landowners can withdraw permissions at any time.'

'When we asked Natural England to look at ways of improving access to the English coast we asked that its research focus on improving access for people on foot but also to highlight any opportunities it found for providing for higher rights. We expect that improved access for walkers will act as a catalyst for identification at the local level of opportunities to provide for other users such as horse riders, through agreements with landowners. . . .'[77]

There appears to be a failure to appreciate the difference between words and deeds, and the distinction between existing rights (which by definition do not need any permission) and permissive access (which does). Moreover, there is no evidence for the assumption that improving access for walkers (by statute) will act as a catalyst for improving access (without any legal requirement so to do) for other users. As we have seen, with the implementation of the CROW Act the reverse has happened.

6.4.4 Progress through Parliament

The unresolved question of equestrian access to the coast was aired in the Lords Committee on the Marine and Coastal Access Bill on 30 March 2009. Baroness Mallalieu (Labour) and Lord Greaves (Lib Dem) were the main advocates for equestrian access to the coast, but there was all party support for safeguarding horse riders' historical right of access to the foreshore.

The key proposals were:

- the preservation of all existing rights of access to the foreshore
- a statutory right of access to the foreshore
- inclusion in the coastal path wherever possible
- rollback of higher rights where the coastal path is affected by erosion
- provision of access leading to the foreshore for cyclists and horseriders.

[76] ibid.

[77] October 2008, Rights of Way Review Committee, paper 0834r.

Lord Davies of Oldham, for the government, promised to go away and look at these matters. The outcome was a denial of the existence of common-law rights.

In the Commons Committee on 9 July 2009, Andrew George (Lib Dem) again raised the question of protecting existing equestrian access to the foreshore:

'The matter of unrecorded common law rights being compromised is particularly problematic for horse riders. There was all-party consensus in the other place that something needs to be done for horse riders and the Government seemed to accept that there were non-statutory public access rights to the coastal margin that need to be protected. . . .'

In reply, Ann McKechin, for the government, stated that:

'there is no general common law right to ride on the foreshore in England. In certain places there is a customary right to ride or there may be a permissive right to do so, but that will be due to local circumstances and it is not a national right country-wide'.

She justified the government's refusal to give a statutory right of access to the foreshore as follows:

'giving horse riders a right of access to the entire foreshore that forms part of the coastal margin is not always appropriate. A blanket approach would not include areas that require special protection from animals running loose, which would not be helpful.'[78]

Ann McKechin did not explain what she meant by the phrase 'animals running loose' or how special areas were to be protected from that particular danger. Neither ridden nor driven horses can be described as 'running loose'.

After all the effort, Part 9 of the Marine and Coastal Access Act 2009 contains section 303, 'Access to the coastal margin'. This amends the CROW Act 2000 by adding to the latter's section 20, which deals with codes of conduct and other information, the following words:

'. . .in relation to access land which is coastal margin, the public are informed that the right conferred by section 2(1) does not affect any other right of access that may exist in relation to that land. . . . '

The situation now obtains whereby statutory rights have been superimposed over non-statutory rights, the same situation created by the CROW Act, with the re-branding of common-law rights and freedom to roam as '*de facto* access', which gives absolutely no guarantees.

6.4.5 The coastal trail

This will be a continuous route for walkers around the coast of England. It will consist of 48% existing public rights of way (footpaths and bridleways) and 52% of new public footpath, which will be 4 metres wide and unsurfaced. Roughly 17% of the trail is likely be subject to erosion. Where this occurs, the trail will be rolled back, but only as a footpath; where the trail is using higher rights of way, the higher rights will be lost.

'Our best estimate is that, including a significant proportion of the length of existing coastal national trails, some 46% of the English coastal trail will follow existing coastal footpaths, and 2% will follow existing coastal bridleways. . . .This proportion will decrease over time as existing rights of way are lost to coastal change.'[79]

[78] Commons Committee, Thursday, 9 July 2009.

[79] *Coastal Access: an audit of coastal paths in England 2008–09,* Natural England, 2009, p. 5.

6.4.6 The coastal margin

The land extending from the trail on the seaward side will be designated coastal margin. In certain cases, this designation will also apply to land on the landward side of the trail. Coastal margin gives a public right to roam for those on foot, accompanied by a dog. Any parallel rights for equestrians will need to be proven. Once again, the law is being altered in a way which obfuscates non-statutory access and creates two classes of citizens: pedestrians and equestrians.

6.4.7 Possible remedies

At a meeting of EAF representatives with officers from Natural England in July 2010 various possibilities were discussed. These included:

(i) permissive access funded under stewardship schemes
(ii) encouraging landowners to dedicate equestrian access rights, or
(iii) an affirmative resolution to change the coastal access regulations to give a public right of equestrian access to the foreshore.

Stewardship: Countryside stewardship has been superseded by the environmental stewardship scheme, the entry level of which does not provide for equestrian access. Higher level stewardship does enable landowners to provide equestrian access subject to certain criteria being met. However, as new applicants will no longer be given annual payments for the creation of new routes, the future uptake will be minimal.

Section 16 dedication: Under the CROW Act 2000 s. 16, landowners may dedicate their land as access land or dedicate additional rights over existing access land in their ownership. Both options can include equestrian access. Natural England hopes that landowners will be willing to do this voluntarily, particularly as it would remove the burden of landowner liability. However, by 2009 only 2.36 hectares had been dedicated for equestrian access under s.16. As yet, there is no information as to whether landowners are prepared to use this power to provide equestrian access to the foreshore.

Amend CROW regulations by affirmative resolution: An affirmative resolution would solve the current problem at a stroke. Under the CROW Act s.44(3), Schedule 2(3), the Secretary of State can alter the regulations in paragraphs 1 and 2 of Schedule 2 to include equestrian access to the foreshore.[80] An affirmative resolution requires the approval of both Houses of Parliament.

According to Natural England, it is inconceivable that the resolution would be used for the whole of the coastal margin, but could apply to the foreshore, excluding mud flats, salt marsh, etc. As there is already provision for excluding or restricting public access to areas such as mud flats and salt marsh in the interests of nature conservation and heritage protection, this presents no difficulty in relation to horses.

Giving equestrians access to the foreshore is covered in Proposal 36 below. However, there are other specific issues that need reconsidering which would also have a beneficial effect and these are set out in Proposals 37–39. (See also Proposals 33–35 above.)

[80] Specifically, Schedule 2(1)(c).

[81] Independent Panel on Forestry Progress Report, November 2011. http://www.defra.gov.uk/forestrypanel

The UK National Ecosystem Assessment, UNEP-WCMC, 2011 http://uknea.unep-wcmc.org/resources/tabid/82/Default.aspx

Proposal 36 Amend the CROW regulations by an affirmative resolution to include riding and driving horses on the foreshore

Proposal 37 Include horse riding and carriage driving on the coastal path wherever physically possible

Proposal 38 Where the coastal path is affected by erosion the rollback provision to extend to higher rights

Proposal 39 Ensure that access leading to the foreshore includes horse riders and carriage drivers

The Marine and Coastal Access Act has left equestrians with the situation that landowners believe that equestrians' common-law rights to the foreshore have been removed and replaced by landowner permissions. This matter needs addressing now as, with the passage of time, it will become the norm and equestrians' common-law rights will be lost for ever.

6.5 Woods and Forests

The proposal to dispose of the Forestry Commission attracted such public outcry that it was stopped dead in its tracks. The government appointed an independent panel to advise on 'the future direction of forestry and woodland policy in England and on the role of the Forestry Commission in implementing policy'. This includes consideration of:

'. . . options for enhancing public benefits from all woodland and forests, in the light of the Lawton Report and the Natural Environment White Paper, including public access for recreation and leisure . . . ' (Independent Panel on Forestry: Progress Report, November 2011, Annex 1, Terms of Reference, p. 30).[81]

The interim progress report offers a ray of hope for the future:

'We believe that as many people as possible, wherever they live, should be able to enjoy access to woods nearby' (p. 16).

'. . . we will explore how the various demands for access and use of forests can be accommodated in both public and privately owned woodlands' (p. 16).

'We believe that at least the current level and quality of access to the public forest estate should be maintained, for the long term, and for the benefit and health of the nation' (p. 24).

'Access is frequently referred to in relation to a particular recreational activity such as horse riding or orienteering. The majority of responses call for current levels of access to be protected and for increased levels of access in future. That the ability to enter woodland should be free and not limited by income is also a popular view' (p. 42).

It is hoped the above will lead to improvements to equestrian access.

Proposal 40 Horseriders and carriage drivers should have access to woods and forests on the same terms as walkers and cyclists

Proposal 41 Public access to woods and forests should be integrated with the public rights of way network

For a detail consideration of equestrian access to the Forestry Commission England Estate, see Appendix 11

CONCLUSION

When the EAF embarked on writing this strategy in 2007, the mood was one of optimism: we were responding to the Government's request in the *Horse Industry Strategy* to create a vision for the future. Over subsequent years, however, that optimism has been difficult to sustain as successive governments delivered less access for equestrians rather than more.

Recovering rights of way is mired in legal process, and local authorities' statutory duties to assert and protect the public's rights and to ensure that they are properly recorded are being treated as if they were nothing more than discretionary powers. Looming over everything is the cut-off date of 1 January 2026 for closing the definitive map to modification orders based on historical evidence, with the consequence that thousands of public ways will be extinguished.

Completing the definitive map under the existing process before 2026 is an impossibility. Over the past 30 years one initiative after another has been abandoned. In the 1990s there was the Milestones initiative; in 2004 Milestones was replaced by Discovering Lost Ways, on which £8.5 million was spent with nothing to show for it; in 2007 Discovering Lost Ways was abandoned and replaced by the Stakeholder Working Group. All these initiatives were interspersed with numerous meetings and consultations with various groups. But 12 years after the CROW Act the definitive map is still nowhere near completion and the system remains totally dependent on the efforts of individual members of the public.

It is clear that the horse is no longer seen as a legitimate means of transport, although use by horses still confers status on rights of way. But the horse as transport - albeit for recreation - should be taken into account in government policies. As it stands, the horse appears to have been written out of existence in pursuit of no discernible or desirable policy objective. And in 2009 the Marine and Coastal Access Act finally confirmed the Government's apparent determination to create a green and pleasant land - but only for pedestrians.

In a culture that proclaims the virtues of diversity, inclusivity, equal opportunity, access for all; that believes that enhancement of the environment and biodiversity improves quality of life and access to high-quality landscapes provides a range of health benefits,[82] the riding and driving of horses is regarded as being a matter of no consequence at all.

There have been some recent signs that this attitude may slowly be changing. In June 2011 Richard Benyon urged all local authorities in England to allow horse riders to use cycle trails and to prioritise multi-user routes wherever possible. But this does not remove the need to simplify the definitive map process and improve local authorities' performance.

More recently Natural England has announced 'Paths for Communities', a £2 million grant scheme for two years to promote rural tourism. Successful projects should include higher rights of way. Money would be available for bridle/horse gates, for example, but not for definitive map modification orders; only creation agreements are proposed as a means of extending the network and these would not necessarily be for higher rights of way.[83]

While these may be positive moves, they do not address the basic need to complete the definitive map. The fact remains that equestrian access has suffered severely. In three decades successive governments have provided walkers and cyclists with valuable new rights. Equestrians, on the other hand, have watched a series of failed initiatives which have delivered nothing at all. It is time that the government extended to horseriders and carriage drivers the consideration and concern it has shown to walkers and cyclists.

[82] 'The Costs and Benefits of Defra's Regulatory Stock: Emerging Findings from Defra's Regulation Assessment', August 2011, Defra's Better Regulation Team and Departmental Analysts, Department for Environment, Food and Rural Affairs, p. 56.

[83] 'This will be a competitive scheme, supporting proposals that offer best value for money. Local community partnerships will bid into a central fund to create new public rights of way links in their area and higher rights (e.g. for horses and bikes) along existing ones where appropriate - and to make the local path network easier to use, better publicised and better integrated with local transport, services and popular destinations' (Natural England website).

APPENDICES

APPENDIX 1 - FACTS AND FIGURES

British Equestrian Trade Association (BETA), National Equestrian Survey, 2011

- 32% of British population (19.7 million) have engaged in some activity connected to equestrianism
- 3.5 million people have ridden in the previous 12 months (5.69% of the population); the 1999 estimate was 2.4 million, indicating a substantial growth
- 55% of equestrian participants are from socio-economic groups C, D and E
- 73% of horse riders are female
- 25% of horse riders are aged under 16, 23% are aged between 16 and 24
- Leisure riding is the main equestrian activity, showing an increase of 9% in just over five years
- Access to safe off road riding/bridleways would increase riding opportunities for 46% of people who ride once a week or less

Sport England Active People Survey, 2006

- Horse riding is the 15th most popular sporting activity in England, with 1% of the population taking part at least once a month

British Horse Industry Confederation (BHIC), October 2009

- The equestrian sector is the largest sporting employer in the UK. Racing and riding together provide 70,000 direct full-time jobs, with indirect employment comprising an additional 220,000-270,000 people
- Horse owners, carers and riders in Britain spend more than £7 billion a year in gross output terms
- There are between 1 and 1.3 million horses in Britain. 1.36 million records have been sent to the National Equine Database
- There are 17 horses per 1,000 people, owned or cared for by 550,000 people
- There are 4.3 horses for every 1 km2
- The average annual expenditure per privately owned horse is £2,166

Women's Support and Fitness Foundation, March 2011

- Equestrianism is the 6th most popular activity for women and the top outdoor pursuits activity
- 304,000 women take part at least once a week
- 90,000 women would like to do more
- 8% of women taking part have a limiting disability

Countryside Agency, 2002

- There are 20,000 unrecorded rights of way totalling 16,000 km, of which 6,700 km are byways or bridleways

Department for Transport, Circular 01/2006

- 46% of serious road casualties and more than 50% of road deaths occurred on rural roads in 2000

Department for Environment, Food and Rural Affairs, 2011

- Horse riders have access to only 22% of the public rights of way network in England and carriage drivers to only 5%

APPENDIX 2 - GENDER AND COUNTRYSIDE ACCESS

Evaluation of currently available evidence-based research

There are no reliable statistics indicating the number of men and women equestrians who need access to the countryside to enjoy their sport. However, a Forestry Commission report found that horse riders visiting forests in England and Wales comprised a clear demographic group largely dominated by women.[1]

The 1996 British Equestrian Trade Association Survey found that 72% of horse riders were female.[2] More recently the National Equestrian Survey 2006 revealed that the fastest growing group recorded in their survey were women between the ages of 25 and 44.[3] The popularity of horse riding among women is also borne out by the General Household Survey 2002 finding that horse riding was ninth in the top ten most popular women's sports; even more popular than tennis.[4]

Key points

- The British horse industry in general has not drawn attention to the fact that the majority of participants in recreational equestrian pursuits are female. Clearly it would not be desirable to promote recreational equestrian pursuits and access to the countryside in particular as a solely female pastime, as there is scope for encouraging more men of all ages to participate.
- Conversely, playing down the number of women horse riders and carriage drivers who need safe access to the countryside fails to take advantage of some government initiatives: for example, the 'Gender Duty' which came into force in April 2007. This should have positive implications for countryside access for equestrians, who are poorly served by the fragmented nature of their network of bridleways and byways. The new duty places an onus on all public authorities to positively promote gender equality by measuring who actually uses their facilities and provide for them accordingly.[5]
- The Sport England-sponsored Women's Sports Foundation (WSF) promotes the role of women in sport, where research shows that they are under-represented.[6] To date WSF have not been supplied with statistical information on the number of women who participate in equestrian sports. Supplying this information would be a valuable opportunity to promote horse riding and carriage driving as active sports in which women participate on a regular basis. It may also attract funding and support.
- The British Equestrian Federation represents the interests of sixteen equestrian bodies to WSF. These bodies include some organisations whose members rely on safe access to the countryside. They are: the British Horse Society, the British Horse Driving Trials Association, the Pony Club, Endurance GB, the Association of British Riding Schools and Riding for the Disabled Association (including carriage driving).

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[1] 'The horse riding group was largely dominated by a clear demographic: female, married and over 30 years of age', *Valuing Forest Recreation Activities: Phase 1 Report*, Report to the Forestry Commission, undated but c. 2004, p. 39, para. 6.2.4. http://www.forestry.gov.uk/pdf/FCPhase1report.pdf/$FILE/FCPhase1report.pdf

[2] Traditionally, the human–horse relationship was male-dominated, reflecting the horse's role as a work tool and the traditional placing of power and power sources under the control of men. More recently this relationship has changed and many more women have become involved in riding as a sport or a hobby. . . . Riding is also no longer restricted to those with higher socio-economic status. A recent survey [anon., 1997] of riders in the UK has shown that only 44% of riders were in the top three socio-economic classes which account for 48% of the UK population. These figures suggest that riding is an activity enjoyed by people from a wide variety of backgrounds' ('The Human–Horse Relationship: Who Interacts with Horses and Why?', P. A. Harris et al., *Proceedings of the Waltham Symposium: The Role of the Horse in Europe*, Equine Veterinary Journal Ltd, undated but c. 2000. http://www.effem-equine.com/Waltham%20-20Horse/behavioural_aspects/humans_and_horses.html#4

[3] '2.1 million people ride at least once a month with a further 2.2 million riding less frequently. This suggests that, as well as the solid core of regular riders, there is large potential for growth. The fastest growing group are women aged 25–44 years old, with a slight increase in the number of men taking up horse riding,' Claire Williams, Executive Director, British Equestrian Trade Association, 'The 2006 National Equestrian Survey', *Proceedings of the 14th National Equine Forum*, 2006. http://www.bef.co.uk/Downloads/NEF%202006.pdf

[4] Results from the sport and leisure module of the 2002 General Household Survey (GHS). For women, the top ten sports and activities, in order of popularity, were:

1. Walking	6. Weight training
2. Keep fit/yoga	7. Running
3. Swimming	8. Tenpin bowling
4. Cycling	9. Horse riding
5. Cue sports	10. Tennis

[5] 'The concept and practice of equity is fundamental in women's sport, and needs to underpin all thinking in the sports sector. The Gender Equality Duty (GED) came into force in April 2007. It is the biggest change to sex legislation since the 1970s and provides a unique opportunity to achieve equality in sports provision at all levels. It places the emphasis on public authorities (and other bodies) to positively promote gender equality, whereas previously the onus was on the individual to prove discrimination. Before this duty came into force, local authorities, schools and colleges and other organisations were under no obligation to measure who actually used their facilities. From April 2007 they have to provide disaggregated data and take action to redress any imbalance. It is difficult to predict the impact the duty will have, but its potential to address the gap in male and female participation should not be underestimated. For WSF this is a major step towards achieving the equality in sports that we have been advocating for many years and we eagerly await to see what the gender duty may bring to women and sport.' http://www.wsf.org.uk/documents/Gender_Equity.pdf

[6] 'Women's Sports Foundation is the UK's leading organisation dedicated to improving and promoting opportunities for women and girls in sport and physical activity. We are committed to improving, increasing and promoting opportunities for women and girls – in all roles and at all levels – in sport, fitness and physical activity through advocacy, information, education, research and training. We campaign for change at all levels of sport through raising awareness and influencing policy. http://www.wsf.org.uk/

APPENDIX 3 - UNCLASSIFIED ROADS AND THE LIST OF STREETS

The legislative background

Riding on an unclassified road

Unclassified roads (UCRs) were not to be included on the definitive map under the National Parks and Access to the Countryside 1949 Act, which only applied to footpaths and bridleways, and roads used as public paths. However, since that time a significant number of UCRs have been recorded as BOATs (reflecting their vehicular status) or as bridleways or footpaths, in which case they are described as having dual status, with the higher status prevailing. However, a large number of UCRs are still only recorded on the list of streets (LoS) or highway register, the local authority record of all publicly maintainable highways.

The requirement to keep a list of streets comes from public health legislation. In 1925 the Public Health Act required urban districts to keep a list of streets, although the use of the term 'street' goes back to the 1848 Public Health Act, by which all streets, roads (other than turnpike roads), bridges (other than county bridges), lanes, alleys, courts, etc., within the district of a local board were declared to be highways, and as such maintainable by the inhabitants at large.

The county councils became responsible for main roads in 1888, and in 1929 took over minor roads from the rural district councils, hence the term 'unclassified county road'. This transfer gave rise to the 'handover' maps. Urban districts continued to look after their minor roads right up to local government reorganization in 1986.

The term 'maintainable by the inhabitants at large' was replaced by 'maintainable at the public expense' by the 1959 Highways Act, while the requirement to keep a list of streets was extended to the county councils by the 1980 Highways Act. By this time, public paths (footpaths and bridleways) and roads used as public paths were supposed to have been recorded on the definitive map, so strictly speaking they did not need to be recorded on the list of streets as well.

In recent years the status of unclassified roads has been increasingly called into question. The present list of streets combines two quite distinct sets of records: county highway records and urban street lists. It should, however, be fairly simple to distinguish which streets are unclassified roads and which are not by examining the original records.

Under the 1949 Act all definitive footpaths and bridleways (public paths) were considered to be 'highways . . . repairable by the inhabitants at large'. Some public paths also appeared on the list of streets, possibly because they were formerly in a local board or an urban district, or possibly because they were genuine unclassified roads that have subsequently been recorded on the definitive map at a lower status. However, if a highway repairable by the inhabitants at large (the public) was not originally recorded on the definitive map as a footpath, bridleway or RUPP (a privately maintainable public road) under the 1949 Act, the assumption must be that this was because it was (and still is) a publicly maintainable highway with full – i.e. vehicular – rights.

APPENDIX 4 - PUBLIC PATHS PROPOSAL

Virtually all those concerned with public rights of way agree that the legislative process is complicated, vastly expensive, slow and uncertain. Any policy depending on it is unlikely to be implementable, as the failure of the Discovering Lost Ways project has demonstrated. Huge sums of public money spent on research are likely to lead to even larger sums being spent on making orders and public inquiries with absolutely no certainty as to the result.

The public paths proposal would solve many of the problems that surround the provision of access for everybody.

1. That there would be one status for public rights of way and cycle routes, namely 'public path'. Public paths would be legally open to all categories of non-motorised user.
2. This designation would apply to restricted byways, bridleways and footpaths recorded on the definitive map and statement or on the list of highways maintainable at public expense. It would also include urban/village jitties, ginnels, alleys, and canal towpaths.
3. All routes awarded in inclosure awards but not recorded as motor roads, UCRs or byways open to all traffice would be recorded on the definitive map as public paths, the inclosure award being the requisite legal event.
4. Any other unrecorded routes could be claimed under the current process, but with a simplified procedure and based on agreed criteria for evidential proof.

It would be up to the individual non-motorised user to decide if he or she could use a public path.

Implementing the network

Highway authorities would be under a duty to make all paths accessible by all categories of non-motorised users within 10 years of the necessary Act receiving royal assent. This would entail replacing stiles with gates and improving bridges. It would have to be accepted that some public paths will never be usable other than on foot due to physical constraints.

There should be a presumption against hard-surfacing of public paths, BOATs and unsealed UCRs. Where a landowner seals a public path, he/she should be required to provide an unsealed alternative.

The time and money currently spent on the definitive map process could be re-directed to an education programme on how to use public paths and other types of access, with a Public Path Code, similar to the Highway Code, which would apply to public paths, BOATS and unsealed UCRs. This should encourage responsible behaviour, thereby making the new legislation more acceptable to landowners.

The proposal would also resolve many of the issues which it was hoped Discovering Lost Ways would tackle: for exampe, change of status mid-route and the under-recording of public rights. By including routes recorded on the list of publicly maintainable highways, it would also bring onto the definitive map many of the allegedly 'lost' routes. The need for research would be reduced, making it a less daunting task for the voluntary sector.

Permissive routes and new access Ideally all permissive access would follow the public path model. Certainly all new access should do so. We would hope/expect that access and rights of way professionals would, within a few years, change their thinking about providing access from today's 'walkers/cyclists' model to a public path model.

Creating a 21st-century network The proposal would still require path creation as the present rights of way network does not provide adequate off-road circuits even for walkers.

APPENDIX 5 - RIGHTING THE RECORD

A way to complete the definitive map

Introduction

The number of bridleways legally recorded on the definitive map is only a small proportion of the overall public rights of way (PROW) network, while the legal process for recording PROW is becoming increasingly complicated, protracted and costly. In addition, increasingly higher levels of proof are required to successfully record bridleways on the definitive map.

Over the past few years the number of horseriders has increased rapidly, while there is already an established body of mountain bikers, all looking for access to the countryside. For horseriders the problem is compounded by the road-safety factor and the difficulties this presents. A mountain bike is easy to transport by car; a horse is not.

Horse riders want somewhere to ride in their immediate locality – a local network – with the possibility of exploring farther afield when time permits. Basically they need to be able to get off the roads, away from tarmac and traffic. And most riders can point to a number of routes (all definitive footpaths, often fenced or lanes) which – if they were only available as bridleways – would make a significant difference to the local network.

They see this as desirable as it would cater for the needs of horseriders, cyclists and walkers, and therefore would give much better value for money than the present, predominantly footpath-based, network. They understand the political and practical difficulties such a course of action would encounter, but feel these are being used as a excuse to do nothing. They have waited too long for their access.

An alternative suggestion is for a selected upgrade of footpaths to bridleway based on the character (suitability/sustainability) of the route. This would be very difficult to legislate for, however, especially as the judgement as to whether a route is suitable for horses depends on who is making the judgement. In practice, it is usually someone with no experience of bridleway riding who decides whether a route is suitable for horses. Often horse and rider can travel a route that non-horseriders would not believe possible.

We are very reluctant to abandon the historical network as the potential answer – or a large part of it – for ridden access. Routes that have been used by horses over centuries are entirely suitable for horses in the 21st century. Like the canals, it is an early transport network that admirably fulfils a modern recreational and tourism need. Moreover, such routes are a part of the nation's heritage.

Rights of way are in the ownership of and benefit the public at large. They do not 'belong' to any one user group or land-owning interest. The proposals set out below would, in our view, be in the overriding interest of the public. In essence, they would fulfil the intentions of the 1949 National Parks and Access to the Countryside Act.

Even when the historical network is properly defined there will still be gaps where the modern road network has overlaid or cut across the old routes, but remedying these will be relatively simple compared to trying to provide alternative 'new' forms of access across the country, as proposed by the Country Landowners and Business Association.

The main obstacle to reinstating the historical network is the definitive map process itself: it is long-winded, increasingly debased,[1] increasingly partial,[2] increasingly costly,[3] and often leaves members of the public disillusioned, depressed, and feeling that their efforts have

[1] For example, the refusal to admit evidence of public vehicular rights.

[2] Favouring the well-resourced property owner, rather than protecting the public right.

[3] The exact cost of a dmmo is difficult to ascertain, as local authorities do not record the cost of processing each individual order. The value of researching and preparing an application to a high standard is in the region of £4000-£5000, although this cost is hidden as the applicant is usually working on a voluntary basis. The cost to the local authority of processing the claim has been estimated at £5000, but could be as high as £10,000 in complex cases.

This does not include the cost of a public inquiry, which can last either a morning or several days, and which may lead to a subsequent inquiry should the order be modified. In addition, in some inquiries the authority may employ a solicitor, barrister and expert witnesses. On top of this there are the costs of the Planning Inspectorate, judicial reviews and subsequent legal actions, objections by landowners and third parties. Nor is there any guarantee that this long and expensive exercise will actually achieve its objective.

been wasted and that they themselves have been cheated. Today few people are prepared to research and submit definitive map modification order (dmmo) applications, and even fewer are prepared to attend public inquiries. The longer the time taken to complete the definitive record, the more difficult the task becomes, as communities increasingly become severed from their roots.

We are therefore proposing a way of short-circuiting the dmmo system by simplifying the evidential requirements and the process for recording bridleway rights as the default status.

In summary, the benefits of the proposal are as follows:

- Achieving the intentions of the 1949 Act
- A general standard for interpretation of historical evidence
- Significant financial savings for local government by reducing both the number of applications to be processed under the 1981 Act procedure and the number of public inquiries
- Resolution of some of the inherent difficulties that arise at public inquiry due to the complexity of highway law
- A realistic time scale in which to achieve a comprehensive record of bridleway rights
- Full public consultation
- Opportunity for landowners to object
- Accords with aims of the CROW Act 2000.

Proposed Legislation to Record Unrecorded Historical Rights

Currently, applications to record historic rights in the form of a definitive map modification order are made to the surveying authority. The processing of these applications involves significant time, cost and resources, with a single claim going through one or more public inquiries being not uncommon.

Schedules 14 and 15 of the Wildlife and Countryside Act 1981 set out the procedure for making the application and the subsequent order.

The proposal is for new legislation outside the 1981 Act to provide an automatic upgrade to bridleway status of:

(a) existing public footpaths shown as such on
  [i] the definitive map and statement, or
  [ii] the Section 36[6] Highways Act 1980 list of highways maintainable at public expense, and
(b) unrecorded paths
where the footpath or the unrecorded path falls within one or more of the categories set out in the attached Schedule of Historical Evidence (see below).

The aim would be that the legislative provision would then enable the surveying authority for the purposes of the 1981 Act (in practice the local authority) to modify the definitive map and statement by simply recognizing the 'legal event'. A minor addition to section 53(3)(a) would be required to recognise the automatic upgrade.

In terms of procedure it would be possible to have a legislative framework modelled upon the mapping process for designating 'Open Country' in sections 4–11 of Part I of the Countryside and Rights of Way Act 2000, as follows:

The Unrecorded Rights Map

1. An independent National Surveying Commission (NSC)[4] should be set up to produce a draft 'Unrecorded Rights' (UR) map of footpaths and unrecorded paths to be upgraded/added to the definitive map using the sources listed in the Schedule. The draft UR map would be advertised and public representations invited.

2. NSC to consider public representations with respect to the showing on or omission from the draft UR map of any way.[5]

3. NSC then to issue the map in provisional form with a right of appeal for any person with a demonstrable interest in the land affected by any way, such appeal being brought only on the ground that the way does not fall within one or more of the categories included in the Schedule.

4. NSC, having considered the appeals, would publish the UR map in conclusive form for each area and the bridleway rights would be deemed to be conclusively proved. This would then trigger a legal event order to be made by the surveying authority to add the upgrades to the definitive map and statement.[6]

This streamlined procedure, which has worked well for designating Open Country, allows public involvement and provides a right of appeal for affected landowners but only on limited grounds, thus avoiding a plethora of often unnecessary public inquiries under the current 1981 Act system. NSC would control the process.

The basis of the proposal is that ways currently shown on the definitive map as footpaths or ways that are currently unrecorded would be upgraded by statute to public bridleways if they are within one or more categories in the Schedule. This would ensure upgrading of suitable footpaths.

Ways would be described by their termini rather than their current definitive map and statement number.

The automatic upgrade would be without prejudice to any restricted byway rights that may exist over any way.

The existing system under the 1981 Act would remain in force to cater for applications for restricted byways, the addition of currently unrecorded footpaths, or for any way for which there is historical evidence that is not included in the Schedule.

Applications to downgrade or delete rights of way would also continue under the 1981 Act procedure.[7] However, a route that has been added to the definitive map via the proposed new procedure would not be open to applications for downgrading or deletion.

The 2026 cut-off date under the CROW Act would be repealed.

It is recognised that the proposals would require legislative changes but the cost of so doing under the UR map procedure would be considerably cheaper than the current system of public inquiries under the 1981 Act. There would be particular savings for local authorities, allowing them to focus on improving the network of rights of way and 'filling in the gaps' to provide a coherent network.

[4] We believe that the independence of the body responsible for carrying out the survey is paramount. It should be specifically charged with ensuring that unrecorded rights are recorded. One of the main reasons that so many historical rights are unrecorded must be laid at the local authorities' door. In many cases the initial survey was inadequate, and there is evidence of surveying authorities – for example, West Riding County Council – silently altering the status of public paths on the draft map to reduce their future maintenance liability (see the EAF strategy, Appendix 7. Subsequent definitive map reviews have misguidedly added unclassified roads as footpaths.

[5] Involvement of local bridleway/riding groups in identifying historical routes that they perceive should be available would reflect current and future need.

[6] This could be in the form of an omnibus order for a particular parish or group of parishes.

[7] An alternative proposal to prevent any further applications to downgrade or delete definitive routes is included in the Equestrian Access Strategy (Proposal 16).

Schedule of Historical Evidence

Lanes
- Ancient and other lanes shown as pre-existing or referred to in inclosure awards, agreements and other parliamentary documents
- Named lanes on 1st- and 2nd-edition Ordnance Survey 1:2500 and 6-inch maps

Inclosure Roads
As referred to and set out in Inclosure Acts, awards and agreements (parliamentary and non-parliamentary), namely:

- All roads and carriage roads
- All private carriage roads (both pre-dating and post-dating the 1801 General Inclosure Act)
- All bridle roads both public and private
- All horse paths, horse ways, halter paths/ways both public and private
- All driftways/droves/drove roads both public and private

Highway Returns under 1815 Poor Rate and subsequent rating Acts
- All ways which have been included in the computation for a return to Parliament pursuant to a requirement of the rating Acts of 1815, 1839, etc.

Commercial Maps, etc.
- All ways depicted on published county maps or in route descriptions and itineraries as a direct road/main road/turnpike road/cross road/byroad/parochial road/mail road/post road/open road (by reference to a key)
- All ways shown on published maps and plans as carriage drives

OS Maps: 1st and 2nd editions 1-inch, 6-inch and 1:2500
- Any way shown as a turnpike road, cross road, main road, minor road, 1st-, 2nd- or 3rd-class metalled road, or unmetalled road
- Any way shown as a 'bridle road'
- All carriage drives

Ordnance Survey Books of Reference and Names Books
- Ways shown in OS books of reference or names books, other than footpaths

Finance Act 1910
- All ways shown as outside the boundaries of hereditaments on record plans, or on working plans where the record plans are not available
- All roads or bridleways for which a deduction was claimed within a hereditament or where a deduction was claimed in respect of a bridleway

Privately Maintainable Highways
- All *Rationae Tenurae, Rationae Clausurae and Ratione Nocumenti* roads and ways, including ways exempt from highway rates

Handover Maps, etc.
- Ways depicted on handover and other maps in relation to the Local Government Act 1929 changes to local authorities
- Ways included in lists of highways held by public bodies including district and borough councils
- Ways included in lists of streets under the Public Health Act 1925

Publicly Repaired Ways
- All ways which have been the subject of public expenditure, other than as footpaths

Railway, Canal, Water, Drainage & Other Acts[8]
- Ways described as a public highway/public road, highway road, street, bridleway/ bridle road in any plan/book of reference arising from an Act of Parliament relating to railways, canals, turnpike roads, waterworks, drainage, and other infrastructure where compensation provisions apply.

Tithe Awards and Parish/Township (Rating Valuation) Maps
- Ways shown/described as a public highway/public road, highway road, street, bridleway/ bridle road in any map/book of reference/apportionment

Estate Maps
- Ways described or shown, other than those shown as footpaths

Court Records
- Ways referred to as a public highway/public road, highway road, lane, street, bridleway/ bridle road in any legal proceedings including indictments, diversions, turning, altering, amending, stopping-up, repairing including want of repair.
- Roads leading to bridges indicted at Quarter Sessions

Definitions
When compiling the Unrecorded Rights map, the following definitions shall apply:

Bridle stye/stile:	bridleway
Horse causeway/causey:	public road maintained as a bridleway
Pack and prime way:	public bridle road/way
Public highway:	public carriage road

[8] From 1846, the advice on the terms used to describe property in railway and other private bills does not include 'bridleway': 'In the instance of a field through which runs a public footway or occupation road not divided from the field by a fence, it is considered better to describe it as "pasture field and footpath" or "occupation road" or "arable field and footpath" or "occupation road" as the case may be' (James Scott, *Railway Practice in Parliament: The Law and Practice of Railway and Other Private Bills,* Owen Richards, Law Bookseller, London, 1846, p. 38, 'Description of Property'). See further op. cit., pp. 39–40.

APPENDIX 6 - GOVERNMENT ROAD STATISTICS

How gathered – where kept

The Department for Transport, Road Length Statistics, 2006 and 2007[1]

The Department for Transport publishes the length of road statistics on their website. Currently, in the road classification hierarchy the lowest categories of roads published in the tables are rural and urban unclassified roads (UR and UU). It is probable that the unsurfaced unclassified roads do not appear on the tables, although the records for them do exist. The source of the information is the DfT major roads database and information from local authorities and the Ordnance Survey.[2]

'Data for minor roads are estimated from Ordnance Survey data, which is agreed annually with local authorities through the Department's R199b return.'

Review of Road Traffic and Road Length Statistics, Report 49, 2007[3]

The method of recording and publishing road length statistics is undergoing a review. The Ordnance Survey is assisting in this process and eventually all the information will be transferred from OSCAR [Ordnance Survey's roads network product] to ITN (Integrated Transport Network).

There is the potential for the manipulation of the information which is kept on the unsurfaced unclassified roads. Their recorded length and status are currently under review.

To quote from Report 49:

'5.7 Improving the Accuracy of Road-length Statistics

'5.7.1 Accurate and up-to-date information about road lengths is necessary to produce robust road traffic estimates as well as to meet user requirements, such as the Department for Communities and Local Government (DCLG) local government funding formula, for road lengths themselves.'

'5.7.2 Private major roads have been included in the major roads as these private roads (usually toll roads, tunnels or bridges) are accessible to the general public, whereas private minor roads (such as private country estates), not usually being accessible to the general public, are not included.'

'5.7.3 Beyond this, it is recognised that the fitness for purpose of road length statistics can vary between users and, in particular, that different classifications might be used for different purposes. For example, some users require "back lanes" to be included in road lengths whilst others prefer them to be omitted. Likewise, exclusion of "unsurfaced" roads might be a further requirement. In some instances, the definitions of such different types of thoroughfare need first to be agreed.'

'5.7.4 The road network in Great Britain totals some 388 thousand kilometres. Major roads, comprising motorways and A roads, make up around 15 per cent of this total, with minor (B, C and unclassified) roads accounting for the remainder. SR2 [Statistics Roads Division] maintains databases of major and minor roads, including data on the length, location, and classification of individual links. The difference in the total length between the major and minor road networks inevitably means that maintenance of databases for the latter is more difficult.'

[1] http://www.dft.gov.uk/pgr/statistics/datatablespublications/roadstraffic/roadlengths/

[2] Records were also supplied by the former regional government offices.

[3] http://www.statistics.gov.uk/about/data/methodology/quality/reviews/downloads/RT&RL.doc

'5.7.5 DfT's major roads network database is based on the Ordnance Survey's ITN (Integrated Transport Network), having moved from OSCAR (Ordnance Survey's Centre Alignment of Roads) in early 2006. The database is updated continuously using information from Local Authorities, the Highways Agency, GORs and ITN.'

'5.7.6 The minor roads network database is updated annually based on the April version of ITN. ITN, like OSCAR, does not differentiate between C and unclassified roads so the Department relies on Local Authorities for C road lengths (from which unclassified lengths can be derived). Doubts about the accuracy of minor road lengths have arisen from road ownership issues as the information held by ITN (and formerly OSCAR) does not always accurately reflect whether roads are privately or publicly owned. SR2 is working alongside OS and Local Authorities to improve the accuracy of the minor roads database.'

'5.7.7 New information enabled better estimates of minor road lengths to be made and published for 2004. This included some amendments made to the data for roads in Scotland where some private roads, predominantly those for which the Forestry Commission is responsible, were previously incorrectly recorded as public roads.'

'5.7.8 The User Consultation exercise indicates that some users are unhappy with the reliability of SR2's road length statistics. This partly results from some inconsistencies in the definition, and measurement, of road links across DfT, the HA and Local Authorities. The Roads Information Framework (RIF) - through implementing standards for recording data about roads in England - should help improvements to be made, especially to the minor roads database. However, this is still some way off.'

'5.7.9 SR2 is working closely with ITN users in the Department, following the move from OSCAR. It is hoped that OS will develop the ITN such that unclassified and C roads can be differentiated as this is not currently possible. . . .

'8.8.6. SR2 will be moving to Integrated Transport Network [ITN], which is a new and improved version of the maps that are currently used. SR2 have liaised closely with Ordnance Survey (OS) over the specifications required for ITN and believe that it will improve accuracy and amount of data about road lengths. For example it will include an additional classification that will allow SR2 to measure the length of alleys (sometimes known as "back lanes"), something which was not possible on OSCAR. . . .

An issue about the ownership and or responsibility for roads has been raised. For example, is road X public or private, HA or LA-managed and, if the latter, which LA manages it? The option of asking OS to add ownership details to ITN is being pursued.'

'9.4.1 GIS Issues

'SR's key processes include keeping the roads network as up-to-date and as accurate as possible. In this context, there are ongoing discrepancies, at several levels of complexity, between LAs' estimates of their roads networks and DfT's, based on OS's OSCAR product. An exercise undertaken in 2003 only partially succeeded in reconciling these differences. It might therefore be helpful to undertake another comparative exercise following the introduction of Integrated Transport Network [ITN].'

'9.4.2 Recommendation (R9.2): Investigate the necessity and practicality of a comparative exercise for road lengths in England.'

Department of Transport Road Length Statistics, 2004[4]

This explains the road classification hierarchy that existed in 2004. The database of information was recorded on the OS mapping tool, OSCAR. It is now in the process of being transferred to ITN.

Other sources

Paul Longley and Michael Batty, Spatial Analysis, 1996[5]: This explains how the Ordance Survey store their road information on OSCAR, which is used primarily for government purposes. It is also used as a commercial base map for GIS. This is the basis of tools like Google Maps and SAT NAV, as there is no other agency which currently holds this information.

Ian Masser, *Governments and Geographic Information,* 1998[6]

Use of GIS for Road Length Data – Further Information[7]

Crossing an urban bridge

[4] See: http://books.google.co.uk/books?id=-K66PApWb3YC&pg=PA115&dq=Ordnance+survey+%22OSCAR+asset+manager%22&lr=&as_brr=0&sig=4bki0YlhoB0tEeWyU3vAnogKGBQ#PPA115,M1

[5] See: http://books.google.com/books?id=1DCq7fg_0QcC&pg=PA127&dq=OSCAR+%22ordnance+survey%22&lr=&as_brr=0&sig=nsA5-i_cX7uqHPtujna1uZlGuS4

[6] See: http://books.google.com/books?id=RfjnnirQqBcC&pg=PA25&dq=roads+%22ordnance+survey%22&lr=&as_brr=0&sig=qgqkABSch-ZbLCbA405gTzuqBOE#PPA35,M1

[7] See: http://www.local.communities.gov.uk/finance/0809/swg/SWG-07-31.pdf

APPENDIX 7 - HOW RUPPS WERE LOST TO EQUESTRIANS

[1] The catalogue reference number is RD1/2/71.

[2] The draft map for Area 5 was sealed on 22 December 1952.

[3] For definitive map purposes, the West Riding was divided into five areas. Area 4 covered Barnsley, Royton, etc. Area 5 included Calderdale, Kirklees and Bradford

The following is one example of how equestrians lost routes, and relates to routes that were originally within the administrative area of West Riding County Council before being taken over by the metropolitan boroughs in West Yorkshire. The lack of higher rights of way here on the present-day definitive maps can be directly attributed to manipulation of the recording procedures by West Riding County Council in the 1950s and 60s. It is not that the true status of routes was not known, or that evidence did not exist, or that people did not identify bridleways and RUPPs. There was a deliberate decision by the county council - and colluded in by some of the district councils - to reduce the public maintenance liability by altering the status of bridleways and RUPPs shown on the draft map to foopaths on the provisional map. This is well documented for the West Riding. The relevant files are available in the West Yorkshire Archives HQ at Wakefield, but the following extracts reveal what happened.[1]

Routes that were recorded as cart roads (CRFs and CRBs) on the walking schedule prepared by the district councils were initially recorded as RUPPs on the draft map.[2] This was then advertised. At the end of the consultation process, the county council became concerned at the potential maintenance liability of the recorded footpaths and bridleways, and circulated the following memo:

'. . . where the width of any public path has been shown . . . greater than normal, i.e. that any footpath included in the Statement accompanying the Draft Map which is shown therein at a width not exceeding 6 feet, be retained but all footpaths having greater widths than 6 feet should be changed to 4 feet; likewise that all bridleways (normally considered to be 8 feet wide) which are shown of greater width than 10 feet should be reduced to the standard 8 feet.
. . . You will appreciate the point has been raised in order to define the liability of the highway authority within the limits of the ways which in some cases are 20, 30, 40 and sometimes more feet between fences' (memo of 2 December 1954).

It then became obvious that if RUPPs were modified to bridleways, the maintenance liability would be further reduced. The draft statements were accordingly amended so that the phrase 'road used as a public path' was prefixed with the word 'bridle'. However, this produced a bastard category which resulted in the following memo:

'1. In the Statement accompanying the Draft Map, there are many cases where Bridleways are described as "Bridleroads used as public paths".
2. You will probably agree that descriptions in the Statements should be confined to those appearing in the Act, that is, "Bridleways", "Footpaths" and "Roads used as public paths".
3. I am commencing the preparation of the Provisional Map and Statement for No. 4 Area[3] and I think only the terms used in the Act should be used in the Statement.
4. When the proposed modifications for No. 4 Area were placed before Committee, I did not consider it necessary to treat matters of this kind as formal modifications under the Act and they were not included.
5. I should be glad, however, to hear that you are agreeable to the type of alterations I have described being made when preparing the Provisional Map' (Memo of 28 May 1957).

The reply on behalf of the Clerk of the County Council warned against such a course of action:

'Having regard to the provisions of section 30(3) of the above Act [1949], I am of opinion that no such alteration as you suggest should be made when preparing the statement accompanying the Provisional Map. I also consider that in the areas where no modifications to the draft map have yet been made it would be undesirable to recommend the County Council to modify the draft map in this manner unless it is as a result of an outside objection or representation' (13 June 1957).

From the Ripponden files, it appears that, in line with the Clerk's caution, the county council had already discussed matters with the district councils regarding representations that the 'bridleroads' should in fact be modified to footpaths. On 11 April 1957 the Engineer and Surveyor of West Riding CC sent the modified draft statement to Ripponden UDC, with the following letter:

'With reference to the discussion which my representative had with you some time ago, I send herewith a copy of the Draft Statement on which are indicated in red the modifications which it is understood you require in the Urban District. . . . It is presumed that where a reduction in width is required, it is on the grounds that the public rights are confined to that width.'

The reply from the District Council reads as follows:

'. . . I herewith return the draft Statement with the modifications to which have been approved. The reductions in width of several of the paths arises out of a discussion with your Mr Gowling upon the implications of the excessive width previously included' (14 May 1957).

The report forms with the representations from the district councils exist for many of the urban districts in the West Riding. Each of these contains an instruction to replace 'Bridleroad used as a public path' with the word 'Footpath' and to reduce the recorded widths to 4 feet. For parish after parish RUPPs and bridleways were silently reduced to footpaths.

The Area Sub-Committee Reports (RD1/2/76) at Wakefield record the number of alterations to status and/or width. The figures are as follows:

Area 1 439
Area 2 471
Area 3 351
Area 4 not stated
Area 5 879

These, excluding Area 4, add up to 2,140 changes.

A memo of 2[?] October 1957 records the number of objections and representations received in each of the five areas as 944, 530, 364, 583 and 1,074, giving an overall total of 3,495.[4] Clearly the lost RUPPs formed a high proportion of the total number of changes.

Under the 1949 Act any modification to the draft map to alter the status of a public path from bridleway to footpath or *vice versa* did not have to be advertised. However, the deletion or addition of a public path or a RUPP had to be advertised in the *London Gazette* and a local paper. Examination of the *London Gazette* for 29 July 1958 in which the modifications to the West Riding draft map were advertised has no record of the deletion of any RUPPs or the compensatory addition of any footpaths. All that is advertised for the Ripponden Urban District is the deletion of three bridleways and the addition of one, although 93 roads and bridleroads that were recorded on the draft map appeared as footpaths on the provisional map. Failure to advertise these changes is confirmed by the West Riding CC records at Wakefield, which contain the lists of modifications to be advertised in the *London Gazette*.

[4] The total number of paths in the county was 11,500, of which 3,500 were modified at draft map stage. The county council instructed the district councils that UCRs should not be put on the draft map as they had higher status. Statistics were sent to the Hon. Secretary of the Central Rights of Way Committee based at the Temple, London. This seems to have been a requirement for all authorities. It may be possible to track down the whereabouts of this information, which would give some idea of the extent of unrecorded rights across the country.

The expunging of the RUPPs originally recorded on the draft map took place without the public having the opportunity to object. The subsequent provisional map was not open to public objection, so the modifications appeared on the definitive map without challenge.

The definitive map was published in 1973. The quinquennial review started in 1978. All over Area 5 representations were made about missing bridleways. West Yorkshire Metropolitan CC, the successor to the West Riding CC, produced a draft revised map showing many of the lost RUPPs as bridleways. With impending local government reorganization the Secretary of State ordered the West Riding County Council to abandon the review. The county council decided to add to the review map only those bridleways to which there was no objection. Where an objection or representation had been received, even if it was that the status of a proposed bridleway should be BOAT, the original footpath status remained, with a note in the file to refer the matter to the Secretary of State under the WCA 1981 procedure.

In Ripponden, 28 of the 91 lost RUPPs were restored as bridleways by the review. However, in Todmorden Borough many of the unsealed unclassified roads, which had been maintained by the borough council until 1974, were put on the definitive map as footpaths.

The revised map was published in 1985, West Yorkshire MCC was abolished in 1986, and the metros took over. None of them had any experience of the continuous review process or were equipped to undertake the work. The first of Ripponden's lost RUPPs went back onto the definitive map as a bridleway in 1997.

Abigail Hogg

APPENDIX 8 - ACCESS LAND (INCLUDING THE FORESHORE) RESTRICTIONS

CROW Act 2000, Schedule 2, section 1

The following activities are excluded on access land:

- Riding a horse or bicycle
- Driving a vehicle (unless it is an invalid carriage)
- Taking an animal, other than a dog, onto the land
- Camping
- Organised games
- Hang-gliding or paragliding
- Using a metal detector
- Commercially-run activities
- Swimming in or using boats or sail boards on non-tidal rivers, lakes and so on
- Taking anything away from the land, like stones, fallen wood or plants
- Lighting, causing or risking a fire
- Damaging hedges, fences, walls, crops or anything else on the land
- Leaving gates open, other than those that are propped or fastened open
- Leaving litter
- Intentionally disturbing livestock, wildlife or habitats
- Posting any notices
- Committing any criminal offence.

Compare the Scottish Outdoor Access Code:

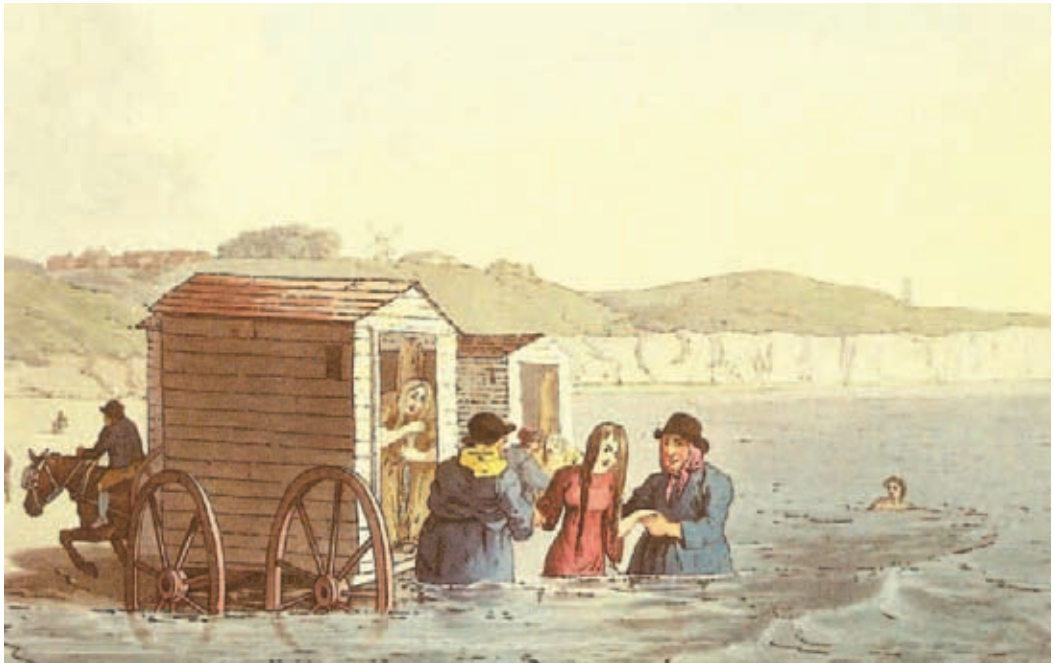
'Know your access rights
'Access rights cover many activities, including for example:

- informal activities, such as picnicking, photography and sightseeing;
- active pursuits, including walking, cycling, riding, canoeing and wild camping;
- taking part in recreational and educational events;
- simply going from one place to another.

'These access rights don't apply to any kind of motorised activity (unless for disabled access) or to hunting, shooting or fishing. Access rights can be exercised over most of Scotland, from urban parks and path networks to our hills and forests, and from farmland and field margins to our beaches, lochs and rivers. However, access rights don't apply everywhere, such as in buildings or their immediate surroundings, or in houses or their gardens, or most land in which crops are growing.'

APPENDIX 9 - THE CASE OF *BLUNDELL v. CATTERALL*, 1821[1]

[1] 5. B. & Ald. R. 268; SC 7. Eng. C. Law . 91



'Sea Bathing. In Scarborough, Bridlington, and many other places on the coast of Yorkshire, are well known as the resort of much company for the purpose of bathing. They are all well provided with warm sea water baths, and with Machines for the open air. The latter differ in several respects from those in the more southern districts, and particularly in having no awning to screen the bathers from the public eye. This frequently occasions very ludicrous scenes. The group here represented is in Bridlington Bay, with a distant view of that beautiful promontory, Flambro' Head.' (George Walker, *The Costume of Yorkshire*, 1814, pp. 53–4)

The case brought before the court was an action for trespass over the beach and foreshore of Great Crosby in Lancashire. The defendant had been operating a business, charging money for transporting visitors in bathing machines over the beach and foreshore in order to bathe in the sea. It was also alleged that this activity caused damage to the land. The lord of the manor of Great Crosby (the plaintiff) was the acknowledged owner of the land and had an exclusive right of erecting stake nets for fishing there; he maintained that the defendant had no right to carry on this *commercial* activity on his private property.

The general question to be decided was whether there was a common law right for all the king's subjects to *bathe* upon the seashore, and to pass over it for *that purpose* on foot, and with horses and carriages. But because the land was proven to have been private property from time immemorial, the judges were obliged to also consider a further question:

'. . . the question really is, whether there is a common law right in all his subjects to do so in locus quo, though the soil of the sea-shore, and an exclusive right of fishing there in a particular manner (namely with stake nets), are private property belonging to a subject, and though the same have been a special peculiar property from time immemorial' (Holroyd J., pp. xvii-xviii).

The judge Abbott C. J. decided that there was no such common law right to bathe *in this case*. The defendant had endeavoured to make a special profit by conveying persons over the land belonging to the plaintiff, and it doing so had caused damage. In addition, the plaintiff had been denied any interest in the profit made by the defendant as a result of his claim that he had a common law right of passage.

The judge also chose to consider the wider national implications of this judgment and he clearly did not believe that it would make a material difference to public access elsewhere, particularly on Crown land.

'In some parts, the King is the owner of the shore; and it is not probable that any obstruction would be interposed on his behalf to such a practice. Of private owners, some may not have thought it worth while to advance any claims or opposition; others may have had too much discretion to put their title to the soil to the hazard of a trial by an unpopular claim to a matter of little value' (Abbott C. J., p. xxxix).

He also noted that public access to the sea shore was analogous to that on inland wastes and commons, although differing slightly:

'But, further, the practice, as far at least as I am acquainted with it, differs in degree only, and not in kind or quality, from that which prevails as to some inland wastes and commons; and even the difference in degree is not in some instances very great. Many of those persons who reside in the vicinity of wastes and commons, walk or ride on horseback, in all directions, over them, for their health and recreation; and sometimes even in carriages, deviate from public paths into those paths which may be so traversed safely' (Abbott C. J., p. xxxix).

In considering whether his judgment was likely to result in widespread actions for trespass being brought before the courts, he concluded that it would not. The reason he gave for this was that, where there was no injury to the owner, the existing law provided suitable checks against such actions.

'But, shall the owner of the soil be allowed to bring an action against any person who may drive his carriage along these parts of the sea shore, whereby not the smallest injury is done to the owner? The law has provided suitable checks to frivolous and vexatious suits: and, in general, experience shows that the owners of the shore do not trouble themselves or others for such matters' (Abbott C. J., p.xl).

Had the true intention of Abbot C. J.'s judgment been to prevent the people from roaming freely over beaches all around the coast, one would expect there to have been a surge of actions for trespass. The fact is, that did not happen; it was acknowledged to be a special case relating to particular circumstances.

APPENDIX 10 - THE HEALTH BENEFITS OF HORSE RIDING IN THE UK

In 2011 the British Horse Society commissioned the University of Brighton in partnership with Plumpton College to research the physical health, and the psychological and well-being benefits of recreational horse riding in the United Kingdom.

Sport England UK has adopted a threshold value for the contribution of sport to meeting government guidelines on the recommended intensity and frequency of exercise that is likely to achieve physical health benefits. The threshold value measures the degree to which an individual participates in sport of moderate intensity activity for at least 30 minutes or more, three times a week. The research, therefore, assessed whether horse riding can be classified as a moderate intensity exercise and examined the frequency with which individuals take part.

The research also examined the psychological and social benefits of horse riding. Reliable existing evidence indicates that physical exercise produces well-being benefits linked to social interactions and changes in mood, anxiety, self-esteem and other personal emotions.

The key findings of the research are:

The physical health benefits of horse riding and associated activities

- Horse riding and activities associated with horse riding, such as mucking out, expend sufficient energy to be classed as moderate intensity exercise.
- Regular periods of trotting in a riding session may enhance the energy expended and associated health benefits.

Over two thirds (68%) of questionnaire respondents participate in horse riding and associated activities for 30 minutes or more at least three times a week. Sport England estimate that such a level of sporting activity will help an individual achieve or exceed the government's recommended minimum level of physical activity.

- A range of evidence indicates the vast majority (>90%) of horse riders are female and over a third (37%) of the female riders who took part in the survey were over 45. Horse riding is especially well placed to play a valuable role in initiatives to encourage increased physical activity amongst women of all ages.
- Amongst the horse riders who took part in the survey, 39% had taken no other form of physical activity in the last four weeks. This highlights the importance of riding to these people who might otherwise be sedentary.
- Horse riders with a long-standing illness or disability who took part in the survey are able to undertake horse riding and associated activities at the same self-reported level of frequency and physical intensity as those without such an illness or disability.

The psychological and social benefits of horse riding

- Horse riding stimulates mainly positive psychological feelings.
- Horse riders are strongly motivated to take part in riding by the sense of well being they gain from interacting with horses. This important positive psychological interaction with an animal occurs in very few sports.
- Being outdoors and in contact with nature is an important motivation for the vast majority of horse riders.

A full copy of the report can be viewed at www.bhs.org.uk/Riding/Health_Benefits_of_Riding.aspx

APPENDIX 11 - THE FORESTRY COMMISSION ENGLAND ESTATE

The Forestry Commission England Estate extends to about 258,000 hectares of land, with over 1,500 woods. Thousands of kilometres of tracks, rights of way and permissive paths run through our woods and forests. They are capable of providing the essential safe, sustainable riding and driving routes that equestrians need away from the busy roads. All woods, no matter how small, are a vital resource for local riders.

But the fact is that equestrians are currently excluded from using a great many of these areas.[1] This exclusion began in the 1960s[2], following a controversial and unjustified policy decision which resulted in some riders being required to pay for permits in order to use land which had been used by right for centuries.

Since that time, the quality and the quantity of equestrian access to England's woodland has steadily diminished. The areas which discriminate against riders by requiring them to purchase permits have been extended, particularly since TROT[3] was invited to administer regional schemes on behalf of the Forestry Commission.

Over the same period, the Forestry Commission has actively invested in increasing the provision of facilities for walking[4] and cycling[5] on their land.

The EAF fully supports this, as it encourages the public to enjoy England's forests. However, these efforts should also include encouraging equestrian access, and there is little evidence that this has hitherto been the case.

The Equestrian Access Forum believes that the Forestry Commission England Estate has overlooked and undervalued:

- the contribution that equestrian countryside recreation makes to the health and wellbeing of women through regular exercise;
- the public demand for equestrian access. The Commission's visitor surveys consistently fail to capture the true quantity of equestrian visitors.[6] This results in the latent demand not being met;
- the potential contribution that equestrian countryside recreation is capable of making to local economies, tourism and sport;
- how equestrian access to the countryside is an essential resource which supports to the grass roots of the horse industry in England.

This apparent oversight of the potential benefits listed above has been used to justify the Forestry Commission's poor provision of equestrian access to England's publicly owned land. If it continues to overlook these factors, the Commission must accept a significant proportion of the responsibility for permanently damaging the cohesion of our national recreational access network.

In order to mitigate these risks and create an environment in which England's horse industry can thrive, the Forestry Commission should reverse some of its more harmful policies by:

- extending the same welcome to equestrians that they currently extend to walkers and cyclists. This must include updating their national and regional websites which are currently heavily biased towards the promotion of walking[7] and cycling[8];
- extending the ethos of inclusivity to the new National Forest woodland;
- ensuring equestrian access to forests is free at the point of use;
- removing the requirement for equestrians to apply for access permits in forests where they are not compulsory for walkers and cyclists.

[1]The Forestry Commission estimates that over 163,000 hectares of the estate has open, permit-free access for horse riders. On some leasehold properties no public access is permitted other than on rights of way. It estimates that a further 28,000 hectares are available by permit, through arrangements with horse riding or toll ride associations or with the freehold owner.

[2]Hansard, 2 July 1963. http://hansard. millbanksystems. com/lords/1963/jul/02/forestry-commission-and-horseriding# column_645#column_645

Hansard, 22 July 1965. http://hansard. millbanksystems.com/ lords/1965/jul/22/forestry-commissions-horse-ridingfees#column_892#colu mn_892

[3]Toll Rides (Off-Road) Trust. http://www. tollrides.org.uk/

Annual fees of £55 per adult and £45 per child are required to ride in those forests where TROT administers permits on behalf of the Forestry Commission. For a family of four this represents an annual charge of £200, a fee that is not required from walkers or cyclists.

[4]Approximately 151,000 hectares of the Forestry Commission Estate benefits from access rights on foot through dedication under the Countryside and Rights of Way Act 2000.

[5]'Forestry Commission and CTC to Work in Tandem', Forestry Commission press release, 2 August 2011.

http://www.forestry.gov.uk/newsrele.nsf/WebNewsReleases/78E790EA79FD2778802578DF00546F67

[6]Valuing Forest Recreation Activities', Forestry Commission 2006. http://www.forestry.gov.uk/pdf/VFRsummary.pdf/$FILE/VFRsummary.pdf

[7] 'Walkers Welcome', Forestry Commission. http://www.forestry.gov.uk/pdf/walkerswelcome.pdf/$FILE/walkerswelcome.pdf

[8] 'Strategic Partnership between CTC and Forestry Commission England', 1 August 2011. http://www.forestry.gov.uk/pdf/CTC_agreement_A4.pdf/$FILE/CTC_agreement_A4.pdf

In terms of simply protecting the limited access to forests which we currently enjoy, we also call on the Forestry Commission to work proactively with equestrian groups and local authorities in order to:

- give statutory protection to the permissive access equestrians currently enjoy to Forestry Commission woodland throughout England. This could be achieved by dedicating higher rights for equestrians (pursuant to section 16 of the Countryside and Rights of Way Act 2000) in their forests. This would bring England into line with Scotland, where under the Land Reform (Scotland) Act 2003[9] no permits are required and access is free to the general public for recreational purposes;
- ensure that the status of unrecorded and under-recorded equestrian routes that run through our forests are correctly added to the definitive maps. These need to be dedicated before any sale and definitely before the 2026 cut-off date;
- identify rights of access through woods that were commons before afforestation. These will, in most cases, still be commons now despite being planted, e.g. Fernworthy Forest on Dartmoor. It is vital that they are recorded so that the equestrian rights to air and exercise are preserved.

In terms of putting equestrian access to Forestry Commission land on an equal footing with that of walkers and cyclists, the Commission needs to:

- form an official partnership with equestrian access bodies similar to the recently announced partnership with the CTC;
- develop a shared vision to increase equestrian access;
- seek funding opportunities to provide sustainable waymarked routes on parity with those currently provided for walkers and cyclists;
- identify suitable partners to fund regional equestrian development officers.

Our eventual goal is to establish a welcoming and functional network of access for equestrians, on a par with that enjoyed by walkers and cyclists. This will benefit England's local economies, as well as providing more members of the public with easy recourse to exercise and fresh air in a safe environment.

Forest riding

[9] In Scotland under the Land Reform (Scotland) Act 2003 the Forestry Commission Scotland is proactive and has entered into the spirit of access by improving tracks in the forests for riders and promoting them at no cost to the riders: for example, in Loch Lomond and the Trossachs National Park.

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