



British Horse Society List of Required Exceptions from the 2031 Cut Off Date

INTRODUCTION

1. The Government has announced that it plans to commence the extinguishment provisions of the Countryside and Rights of Way Act 2000 ('the 2000 Act'). The Secretary of State may make regulations under [s.54\(1\)\(d\) of the 2000 Act](#) to except footpaths and bridleways from the general extinguishment. This paper makes the case for various ways that should be exempted from the extinguishment provisions. We are aware that the exceptions regulations have been in preparation for some considerable time now and have been the subject of lengthy discussions. We know that a number of the issues which we discuss here are being addressed in that draft but our volunteers still have concerns that some important and useful paths could be lost which would be contrary to SWG proposal 1 which sought to ensure effective protection for useful or potentially useful rights of way.

PROPOSED EXCEPTIONS

2. Some ways may fall into one or more of the exceptions below. We believe there is no harm in having overlap, and it will not disadvantage a landowner by a way falling into more than one exception.
3. Several of these criteria for exceptions bring with them a desire to except ways that continue into another administrative area, for example, the path has only been recorded in one parish but is part of a longer way in reality. Some of these examples have been difficult to set out concisely but the examples should illustrate the points made.
4. The proposed exceptions do not mean that ways can be recorded on a lower standard of proof of highway status than is currently required. All they do is to except a way from the extinguishment

provisions of the 2000 Act so that they may be considered, if appropriate, after the extinguishment day (currently in England proposed to be 1 January 2031).

5. The exceptions the Society has identified as necessary are:

Exception 1 – Ways that have been in frequent use

Exception 1A – Higher rights in frequent use on ways recorded as footpaths

Exception 2 – Ways shown on the List of Streets or Street Works Register

Exception 3 – Urban Ways

Exception 4 – Unrecorded and Under-Recorded Widths

Exception 5 – Ways subject to definitive map modification orders or applications

Exception 6 – Routes that change status or end at a current or former administrative boundary

Exception 7 – Stub Ends

Exception 8 – Farm Yard Gaps

Exception 9 – Enclosed Routes

Exception 10 – Former West Riding of Yorkshire

Exception 11 – Routes which were downgraded to footpath in a Special Review

Exception 12 – Claimed routes not identical to the proven route

Exception 13 – Administrative areas not required to have a definitive map in 1949

Exception 14 - Discrepancies between the Definitive Map and Definitive Statement

Exception 15 – Administrative Errors

EXCEPTION 1 - Ways that have been in frequent use

PROPOSAL: A way used by the public without interruption for a period of 5 years preceding the commencement date should be excepted.
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Explanation

6. The principle of this exception has been accepted by the Stakeholder Working Group (SWG), however there are aspects of what is being proposed that are cause for concern.

7. We consider that the proposed criterion of a way being 'in frequent and consistent use' is too demanding to prove, open to too much ambiguity and is not familiar legal language. Terminology based on s31 Highways Act would provide greater legal certainty, for example,

'a way over any land which has been actually enjoyed by the public without interruption for a period of 5 years preceding the commencement date of these provisions.'

8. It has been suggested that this exception should only be available for a limited period of time. The Society notes that there is no provision in S.54 of the 2000 Act that would provide for this. S.54(1) states

'A footpath or bridleway is an excepted highway for the purposes of section 53(1) if -
(d) it is a footpath or bridleway of such other description as may be specified in regulations made (as respects England) by the Secretary of State or (as respects Wales) by the National Assembly for Wales, or....'

Justification:

9. The section does not provide for an excepted highway that is time limited. There can be no time limit on this exception.

10. The corresponding provision in the Natural Environment and Rural Communities Act 2006, whereby motor vehicular rights were extinguished except in specific circumstances used a provision similar to that suggested at s.67(2):

Subsection (1) [which would have extinguished the rights] does not apply to an existing public right of way if—

(a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,

11. It would be consistent with other legislation and assist the understanding of legislation if similar terminology were used for similar actions.

EXCEPTION 1A - Ways that have been in frequent use (higher rights)

PROPOSAL: A way recorded on the definitive map at one status (for example footpath) but used by the public without interruption for a period of 5 years preceding the commencement date by a higher-status mode (horses, cyclists or horse drawn vehicles) should not have the rights above those recorded extinguished.

Explanation

12. In addition to the case (Exception 1) where a way is preserved from extinguishment if it is used as a footpath or bridleway for a period of five years leading up to commencement, a further exception is needed to except routes where there is frequent use of a way shown on the definitive map as a footpath by riders, cyclists or carriage drivers and of a way shown on the definitive map as a bridleway by carriage drivers. It is suggested that this is consistent with the expressed intention of the SWG.

Justification

13. Higher rights in continuing use should be excepted in the same way as paths in continuing use. If such rights are not excepted the current use will not be able to continue beyond the cut off date as the higher rights will be extinguished.

EXCEPTION 2 - Ways shown on the List of Streets or the Street Works Register

PROPOSAL: A way, the whole or part of which subsists over a street that appears on a list required to be kept in accordance with s.84 Public Health Act 1925, s.38(6) Highways Act 1959, s.36(6) Highways Act 1980, or a register under s.53 of the New Roads and Street Works Act 1991 is excepted.

Explanation

14. The principle of this exception has been accepted by the SWG, however there are aspects of what is being proposed that are cause for concern.

15. It is considered that a way should be excepted if at any time it has been on a list of streets prepared under the duty imposed by the Public Health Act 1925, Highways Act 1959 or the Highways Act 1980, or identified as a publicly-maintainable highway on a register prepared under s.53 of the New Roads and Street Works Act 1991 Act, and has not been stopped up without due legal process. There is copious evidence of routes being removed from such registers without due process.

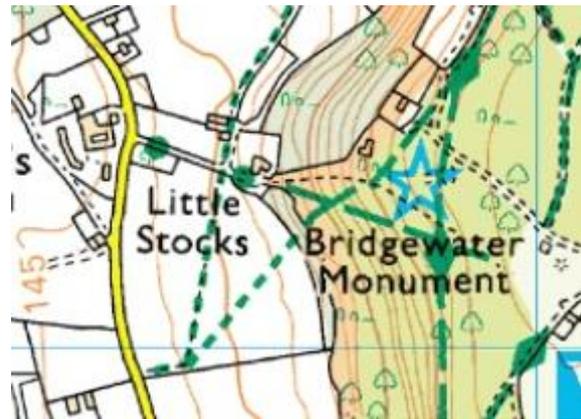
16. Where a way is recorded as a footpath or bridleway on the definitive map and is also shown on a list of streets/or a s53 register any higher rights would be extinguished on the cut-off date.

Justification

17. It is important therefore that this exception preserves any higher rights over a way shown as a footpath or bridleway on the definitive map, that is also recorded on a list of streets or street works register, so that the opportunity is not lost to record a complete way, when the evidence exists. The Fangdale Beck example below demonstrates what would happen in such a circumstance if the application had been determined after the cut off date.

Example. This OS map shows the way to Little Stocks, in Hertfordshire, as an ORPA (Other Route with Public Access). This indicates it was on the List of Streets in circa 1998-1999 when the data were collected from highway authorities by the OS.

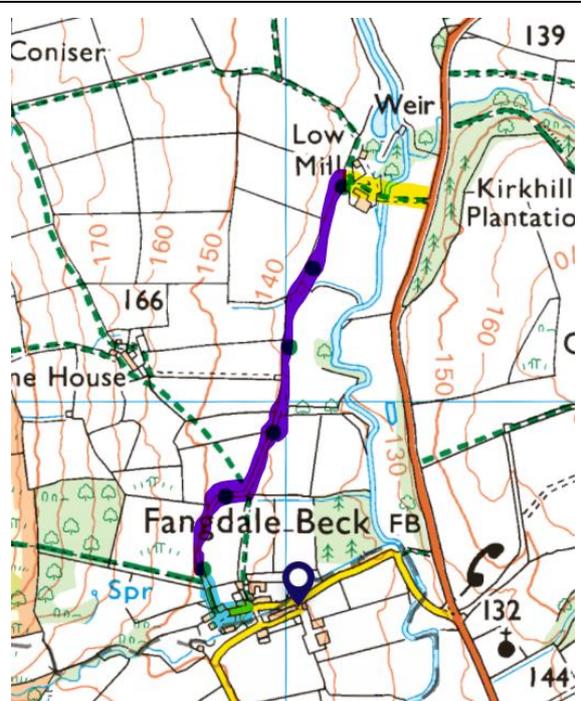
It is not on the List of Streets today, nor is there any record of it ceasing to be maintainable at public expense. This way is an essential part of the way from the road shown yellow in the west to [Aldbury 29](#) bridleway to the east.



Example: In Yorkshire The Restricted Byway No. 10.177/132 Fangdale Beck to B1257 Near Low Mill Modification Order 2020 (confirmed 23 May 2023) was for a way where the full length was on the list of streets, with one section also recorded as a footpath (highlighted yellow) on the definitive map, one section as bridleway (highlighted blue), and the majority of the way (highlighted purple) not recorded on the definitive map at all.

The Inspector decided that the whole way should be recorded as a restricted byway.

However, if no application had been made before the cut-off date for a DMMO, vehicular or bridle rights would have been extinguished over parts of the road after the cut-off date.



EXCEPTION 3 – Urban Ways

PROPOSAL: Defined urban ways and the continuation of those routes where they leave the defined urban area until they reach another highway of equal or higher status or place of popular resort and any bifurcation of such route.

Explanation

18. The principle of this exception has been accepted by the SWG, however there are aspects of what is being proposed that are cause for concern, ie what happens at the edge of the defined urban area to the continuation of the way. We do not think that it was intended that the extension should be extinguished and a cul de sac way created. Consideration, therefore, needs to be given as to how the continuation of such ways are preserved where they leave the defined urban area.

Justification

19. Without such an exception there is a risk that a plethora of cul de sac ways will be created, some may be saved but other useful ways may be extinguished, and where they link up to other public rights of way, those linkages will be lost.

Example. This OS map shows a way known as [Little Lane](#), and is in Pirton, Hertfordshire. A to C is a public road today but C to D is an urban alleyway, not shown on the definitive map.

If it turns out to be a footpath or bridleway, it would be extinguished. There are many such urban ways at risk of extinguishment if they are not recorded in time.



EXCEPTION 4 – Unrecorded and Under-recorded Widths

PROPOSAL: Any unrecorded width should be excepted whether the way itself is recorded with a width or recorded without a width .

Explanation

20. Section 53 of the Countryside and Rights of Way Act 2000 extinguishes certain unrecorded footpaths and bridleways of historical origin, and may bite to extinguish the unrecorded width of footpaths and bridleways of historical origin (i.e. pre-1949) which are nevertheless recorded on the definitive map and statement.

21. Section 53 may have the negative effect of extinguishing all or part of the width of a right of way in two circumstances:

- where a way is recorded in the definitive map and statement but with a width defined in the statement being less than the true width;

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HCC 82

Commences at junction with Heronsgate Road at the Swillett thence NE to junction with Quickly Lane.

Width 2'

Limitations

EXCEPTION 5 – Ways subject to Definitive Map Modification Orders or Applications

PROPOSAL: Any way that is the subject of an application for a definitive map modification order or is the subject of a modification order should be excepted.

In respect of an application which turns out to be technically defective, the applicant must be given a reasonable opportunity to remedy the said defect or defects after the cut-off.

Explanation

24. This exception is needed because of three alternative courses of action.

a. Order Processing Time. It takes time for a definitive map modification order application to proceed through its various stages. It has to be made, then advertised. A period for public scrutiny and objections follows. An opposed order may be held by the surveying authority before being submitted to the Secretary of State for confirmation. There may then be a local inquiry and there is the potential for modifications to the order proposed by an Inspector to be advertised for a further objection period. An opposed order can take several years from being made to its final determination. It is likely, therefore, that many orders will be in process at the time of any cut-off date.

b. Register of Applications. It has been proposed that ways should be excepted if they are on the surveying authority's Register of Applications. Regulation 3(6) of The Public Rights of Way (Register of Applications under section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005 (SI 2005/2461) requires a surveying authority to update its Register of Applications within 28 days of receipt of an application, but many take longer than this, some do not add all the applications they receive, and some do not yet have a Register to update. An applicant for a modification order to record a way or record additional rights on a way already recorded should not be at the mercy of the authority's timing or inclination with respect to updating its Register of Applications.

c. Applications Close to Cut-Off Day. Some applications may be made particularly close to the cut-off date which would mean that there isn't time for the surveying authority to add the way to its Register of Applications before the path is extinguished.

Justification

25. It is likely that many orders will be in process at the time of any cut-off date. In respect of applications submitted close to the cut off date there will not be time time for the surveying authority to add the way to its Register of Applications before the path is extinguished.

26. We do not believe it would have been Parliament's intention that, having left it to the voluntary sector to try to complete the statutory record of historical ways so that these legal ways are not lost to future generations, their hard work should have been in vain.

EXCEPTION 6 – Routes that change status or end at a current or former administrative boundary

PROPOSAL: Ways which are in continuation of a recorded way that ends at a current or former administrative boundary should be excepted.

Ways that change status at a current or former administrative boundary and their continuation to a highway or place of popular resort should be excepted.

Explanation

27. Some parish councils failed to recognise the existence of rights when the original definitive maps were being drawn up. The parish council on the other side of the administrative boundary noted the routes on their side, and the routes were recorded on the definitive map. In many cases, the surveying authorities did not resolve the discrepancy by ensuring that either the way was taken off because it didn't exist or the way on the other side was recorded.

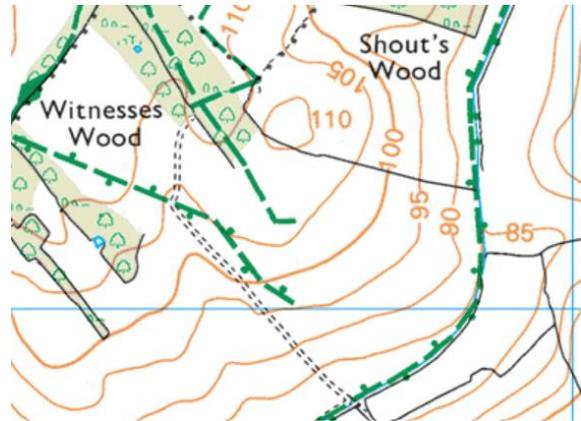
28. Parish boundaries are adjusted from time to time, which means that some paths that used to end on a boundary now appear to stop mid-field.

29. This exclusion is also designed to apply to a way where part of the width falls in one area and the remaining width falls in another. Examples include bridleways along which county boundaries run.

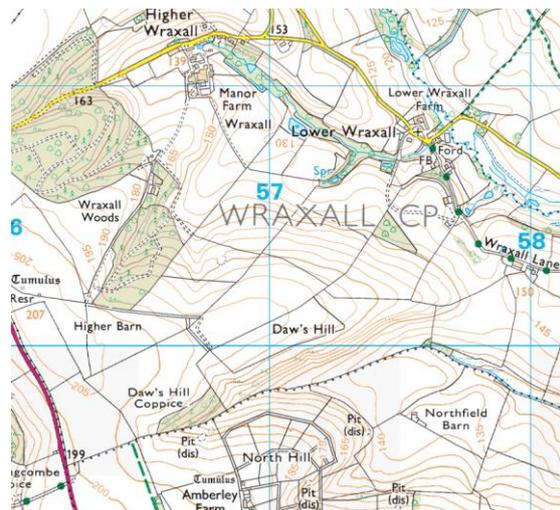
Justification

30. If a bridleway or footpath ends or changes status at a current or former administrative boundary the opportunity should be preserved to be able to apply for a continuation or upgrade/downgrade of that way to the next highway.

Example: Little Munden 17 restricted byway and Little Munden 18 bridleway in Hertfordshire are shown as dead-ends today. They were both in Great Munden in 1841, ending on the Great Munden/Little Munden boundary, which moved subsequently. Any continuation routes in such circumstances should be exempt from extinguishment.



Example: The recorded bridleway in Chilfrome (southern end of OS map extract) appears to end on the parish boundary with Wraxall, Dorset. It is believed to continue to Manor Farm.



Example: This [way in St Albans](#), Hertfordshire varies between bridleway, byway and 7yds of footpath. Where changes of status take place, the existence of the higher of the rights shown should be excepted, so that if it can be proven, the full length can be recorded at the higher status.



Example. The road from the bridleway running south-eastwards to Hyde Lane runs along the county boundary. The western side is in Central Bedfordshire and is the subject of an order to record it as a byway open to all traffic, as it satisfied the 'shown on a list of streets' exemption to motor vehicle rights being stopped up. The eastern side is in Hertfordshire where it is not on the list of streets and so presumably has become a restricted byway. If there had been a saving for moiety in the 2006 Act, the same status would be present on each side.



EXCEPTION 7 – Stub Ends

PROPOSAL: Gaps of no more than 200 metres between recorded routes and any adjoining highway of equal or higher status should be excepted.

Explanation

31. These are many instances where gaps exist between a footpath or bridleway recorded on the definitive map and the next recorded public highway; these are often small in length, but if the rights over them are extinguished in 2031 users could be prevented from being able to access the rest of that bridleway/footpath from that access point.

Justification

32. Extinguishing the continuation of existing recorded rights of way risks isolating many rights of way in daily use. If such gaps are not excepted, people will not be able to access many ways that the Government had envisaged being available to people to enable them to access green space within a 15 minute walk will be extinguished.

Example. This gap between the footpath and
bridleway, and the 'yellow' road in Staple
Fitzpaine, Somerset, could mean that path
users cannot reach the village to the east.



EXCEPTION 8 – Farm Yard Gaps

PROPOSAL: Gaps between two or more public rights of way abutting the boundary of premises which at the time of preparing the parish map was, or was likely to have been, agricultural premises should be excepted.

Explanation

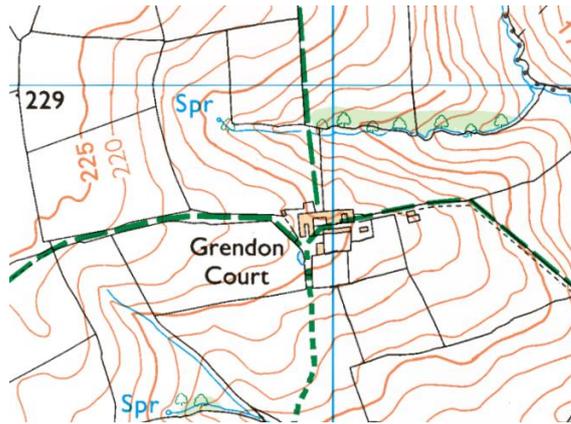
33. The Ordnance Survey large scale plans do not show paths through built up premises or land parcels. Consequently, in some areas, on the survey made under the National Parks and Access to the Countryside Act 1949, when the parish surveyors reached the farmyard, they often did not show a continuation through it as the farmyard was surfaced with no defined path across it, and no path shown on the Ordnance Survey base map.

Justification

34. We believe there are many such cases of discontinuous rights of way across farmyards. We do not believe it was ever the Government's intention that those rights of way should become effectively unusable because of an error at the time of the 1949 Act, which meant that the parish surveyors did not do their job properly and the surveying authority failed to act on it.

35. Often omissions are not obvious to the user because in some of these cases it will be accepted that there is a right of way across the farmyard, and no attempt is made to try to stop the user. In such cases it is not reasonable for volunteers to focus on filling in all these hundreds of gaps in the definitive map and statement. It should not be left to the users to do this rather than surveying authority which was originally at fault.

This example is of Pencombe with Grendon Warren Bridleway 9a in Herefordshire which does not connect with the bridleway running to the south of the farm yard.



The section of footpath 114/36, Letcha, Cornwall running through the farm yard is not recorded on the map.



EXCEPTION 9 – Enclosed Routes

PROPOSAL: Routes which were wholly or predominantly enclosed on 1 Jan 2023 and which are wholly or predominantly on unregistered land should be excepted.

Explanation

36. Large numbers of rights of way were enclosed corridors and marked on historical maps. They were not part of the frontages.

Justification

37. Historically these ways would often have been highways connecting local communities, and the neighbouring frontagers would not have owned any part of the highway. We, therefore, think it justified that these ways should remain public rights of way if the evidence exists to record them as

such. Landowners and land managers will be aware of the existence of such routes because they are physical entities

Example. This enclosed track in Chorleywood, Hertfordshire is not registered at HM Land Registry although surrounding land is registered. It enables walkers, riders and cyclists to go from one bridleway to another.



EXCEPTION 10 – Former West Riding of Yorkshire

PROPOSAL: Higher rights over ways recorded as footpaths in the West Riding of Yorkshire should be excepted.

Explanation

38. The lack of higher rights of way on the present-day definitive maps in the metropolitan boroughs in West Yorkshire can be directly attributed to manipulation of the recording procedure 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 claim 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 footpaths 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.

39. While the attached note relates to the former West Riding of Yorkshire, and sets out more reasoning for excepting routes within this area, if evidence can be produced showing a similar state of affairs elsewhere, then those areas too should be excepted.

Justification

40. It is unjust that past unlawful behaviour by councils should not be remedied so that the inhabitants of those areas have the true public rights of way network that they are legally entitled to. Not to provide such an exception will deny those living in one of the Government's levelling up areas the opportunities to access greenspace for their health and well being.

EXCEPTION 11 – Routes which were downgraded to footpath or bridleway in a special review

PROPOSAL: Higher rights over ways downgraded during a Special Review under the Countryside Act 1968 should be excepted.

Explanation

41. Routes were often downgraded to footpath in a special review. The *Hood* judgment determined that there could be no downgrading to footpath unless bridleway rights had been shown not to exist. The government recognised that legislation may be required to address this problem but this has never been implemented. Some routes were also incorrectly downgraded to bridleways where there was evidence of public vehicular rights. The judgement in [Kind \[2005\]](#) established that such rights were not extinguished by the downgrading and that the Definitive Map could be modified to show these routes with the correct status.

Justification

42. Where it can be proved that higher rights exist over those ways that were downgraded in a special review these should be excepted so that applications can continue to be made to correct the record.

EXCEPTION 12 – Claimed routes which are not identical on the ground to the proven route

PROPOSAL: (1) Where an application has been made for a way, and on investigation it is found to have a different alignment, the correct alignment should be an excepted route.

(2) Where the investigation shows that a higher status exists on a way than that applied for, the higher status way should be excepted.

Explanation

43. Often when routes are claimed it turns out that the true line of the way is not identical to the claimed way. Also if the way turns out to have a higher or indeed lower status than that claimed, it should still be preserved with whatever status it had and not merely the status in the application.

Justification

44. Where an application has been made and there is evidence that proves a historical way exists it should not be able to be defeated simply by it being determined that the true alignment of the way is different from that shown on the application plan. Similarly when a particular status has been applied for and evidence determines that it has higher status then it should be possible to record that higher status.

Example: The Ordnance Survey Map and the Somerset Definitive Map here clearly show footpath L3/8 running to the side of Knighton Drive (Track) which is the way that is currently used. If this way was not already recorded on the definitive map and an application was submitted along the line of the definitive way but evidence proved that it actually exists along the drive, the opportunity to record the way on that route would be lost as the footpath on that line would have been extinguished if there was no exception.



EXCEPTION 13 – County Borough (Excluded Area) Exemption

PROPOSAL: Routes in any administrative area which was not required to prepare a definitive map and statement under s.35 of the National Parks and Access to the Countryside Act 1949 should be excepted.

Explanation

45. The County Boroughs were excepted from the definitive map process until 1981, but even now it is thought that some have not actually started a definitive map, while there are others which have made very little progress.

46. The power to indefinitely extend the deadline in respect of these areas was clearly conferred because it was unreasonable to expect a definitive map to be produced under that process in short order.

Justification

47. It is important that people in areas not required to have a definitive map in the 1950s are not disadvantaged when compared to people in areas that do have a definitive map. Not to provide such an exception will deny those living in those areas the opportunity to have a more joined up public rights of way network.

EXCEPTION 14 – Discrepancies between the Definitive Map and Definitive Statement

PROPOSAL: Ways which are described at one status in the definitive statement but shown at a different status on the definitive map should be excepted.

Explanation

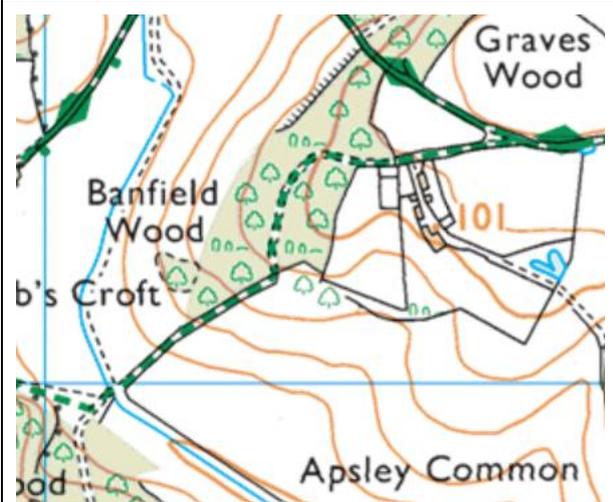
48. There are ways where the status depicted on the definitive map and the status description in the definitive statement differ. The courts have held that this discrepancy is sufficient to be a discovery of evidence entitling the surveying authority to review the evidence and make an order to align the statuses. Sometimes this results in the higher status, sometimes it results in the lower status.

Justification

49. This exception is needed to permit the higher status to be determined on the facts of the case. If the map shows the higher status, then any member of the public seeing this shown on the Ordnance Survey would think he had nothing to do to. This exception removes the unfairness of a depiction on maps where the statement shows a different status.

50. In Herefordshire, where the definitive statement read CRF or CRB (both types of Road Used as Public Path), the map was marked footpath or bridleway, and so the way did not gain the benefit of being recorded as a restricted byway pursuant to ss 47-48 Countryside and Rights of Way Act 2000. This affects over 250 ways in the county, each of which needs to be examined to ensure the correct status has been recorded.

Example: Little Munden 12 (Hertfordshire) is shown as footpath on the definitive map but bridleway in the definitive statement.



Example: Eastwick and Gilston 27 is a restricted byway in Hertfordshire. Where it crosses the parish boundary, it is shown as a High Wych 40 restricted byway on the definitive map but as a bridleway in the definitive statement. Interestingly the OS map shows High Wych 40 as a bridleway, contrary to the definitive map.



EXCEPTION 15 – Administrative Errors

PROPOSAL: Ways which are missing from the definitive map and statement or are incorrectly recorded as a result of an administrative error, where such an error is capable of being corrected by an order made pursuant to the power conferred by s53ZA WACA81, should be excepted.

Explanation

51. The proposed insertion of s53ZA into the 1981 Act should allow modification of the definitive map and statement to correct administrative errors, where both the error and the necessary correction are “obvious”. The section will require the surveying authority to decide to exercise the power; the proposed exception will simply enable a third party to make an application to modify the map accordingly where the authority has not chosen, or not yet chosen to exercise that power.

Justification

52. It is important that these administrative errors can be corrected where the authority has not chosen, or not yet chosen to exercise the power contained within s53ZA of the 1981 Act when inserted.

EXCEPTION 16 – Definitive ways joining an unrecorded highway.

PROPOSAL: Unrecorded highways onto which definitive rights of way terminate should be excepted.

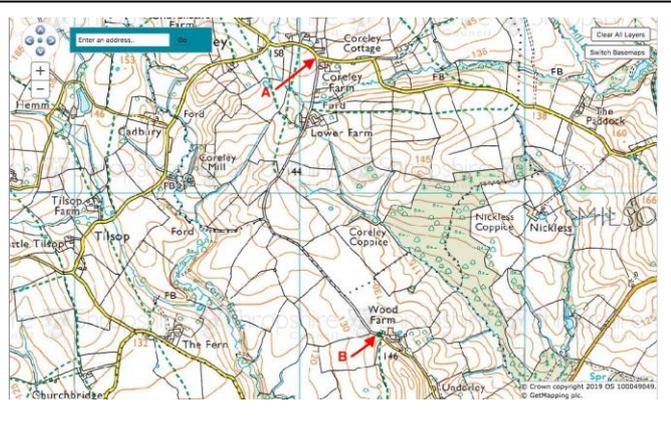
Explanation

53. There are ways which are recorded on the definitive map which terminate on a way that is not recorded as a highway.

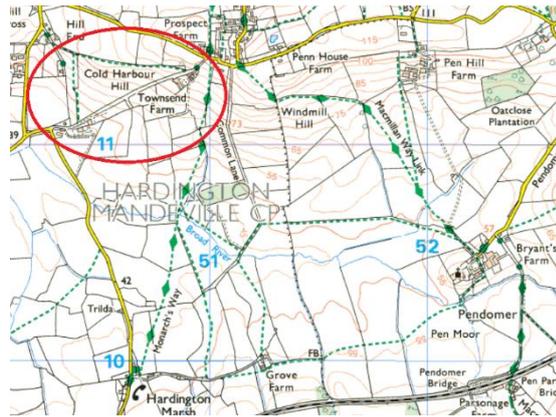
Justification

54. If such ways are not excepted then those persons using the definitive way will have to turn around when they get to the end of the way, as the way it joins, if it is an unrecorded footpath or bridleway will have been extinguished on the 1st January 1931.

Example: The Ordnance Survey plan shows three definitive footpaths terminating on a way, delineated between points A and B, that is not on Shropshire Council’s list of streets.



Example: The Ordnance Survey plan shows two definitive footpaths terminating on a way known as Cold Harbour Lane, that is not on Somerset Council's list of streets.



Dated 12 September 2023