

R Cuthbert

I'm a RoW practitioner myself so my apologies if some of my words come very much from that perspective; but I'm aware that we all do need to have an open mind to the needs of users and landowners alike.

The context for today is that unrecorded footpaths and bridleways created before 1949 cannot be recorded after the 1 January 2026 cut-off date. That date was written into section 53 of the CRoW Act in 2000, but that section is yet to be commenced. It will be commenced however if and when the Deregulation Bill is enacted and the quid pro quo, to keep all things RoW balanced and fair is an entire package of *largely* deregulatory proposals put forward by the SWG on RoW.

The SWG reported an agreed package of changes to the Minister, in their Stepping Forward Report and the Government has turned some of these into proposals in the Deregulation Bill, which is currently working its way through the House of Lords stages in parliament. The other proposals are planned to be addressed through secondary legislation and guidance.

The overall plan is to cut the time taken to record rights of way, to help ensure those routes set to be lost at the 2026 cut-off will be preserved and to give landowners and occupiers, if not complete 'certainty', then at least a better level of assurance about what rights exist and where, across their land.

Today is an interactive seminar where I hope you will all get a chance to ask any questions you may have and we can all discuss:

- Changes to the legal framework for **recording, diverting & extinguishing** public rights of way;
- How procedures will become more **streamlined, flexible & light touch**;
- **Balancing public & private interests**, the right to apply and working with landowners to avoid disagreements;
- **Making applications**; finding and recording the evidence
- **Partnership Working**; to be able to do more with less in the current local govt climate.

We have the opportunity to feedback from today to those govt colleagues guiding the Bill through, on the pitfalls to avoid from late amendments, along with the key issues to be included in the regulations and guidance, and as we are already over half way from the CRoW Act in 2000 to the cut-off date in 2026, the desire to get on with it while we still have some time. The worry is that we only have 3 months for this bill to achieve Royal Assent before all bets are off for the general election...!

Just over a year ago we met in a similar session to this arranged by Westminster Briefing and heard from landowning interests of their concerns, along with the RoW practitioners closest to this set of proposals and the OS. I'm pleased to be able to welcome back Mike Walker, William Upton and Michael Wood and we have Nick Lindsay this time from the OS, along with Phil Wadey and Sophie O'Sullivan to help set out the bigger picture.

Since that last seminar in Dec 2013 the Bill has progressed through parliament, past the 2nd reading, to Report Stage and we even have draft explanatory notes and a very early stab at draft guidance. All of which start to give the picture of what the govt is trying to achieve.

So what are the proposals so far?

- A presumption to divert / ext. paths across gardens / farm yards, on which subject non-statutory guidance is already out.
- Secondary Leg. and Guidance hoped to be out all on the same day as the commencement of the Act, desired by April 2016.

A new Sch 13A replaces Sch 14, it describes

- A preliminary assessment of Apps. need to be done within 3 months (the BET).
- Applicant has to state why they believe the DMS should be modified? and App. not registered unless it passes and that Belief has to be 'reasonable'.
- There's to be a new culture of asking if landowner will consent to the MOD app / or consent to divert...
- Direction to determine will be via Magistrates Ct (not SoS) after 12 months, with guidance for relevant grounds for appeal.
- Notices on website (or other suitable digital media).
- Test will be the 'Balance of Probabilities'.

Sch 14A (replaces Sch 15).

- Publish Orders on LA website.
- Orders can be severed, so only part with relevant obj. has to go to SoS.
- Mod Consent Order can be Confirmed by LA, even if objections!

Regulations

- Simplified process for 'obvious' admin errors.
- Cannot downgrade or remove a route on pre 1949 evidence.
- 12 month grace period after cut-off for LAs.
- Public RoW become private RoW for occupiers.

Transitional Provisions.

- How to deal with backlogs? – applying retrospective provisions.

PPOs – Sch6 HA80 (& Sch2 refs).

- Notices can go on LA websites.
- Can disregard irrelevant objections and statutory guidance on what is 'relevant'.
- Can sever orders and just submit part with relevant objections to SoS. Or, if dropped, confirm rest of unobjected parts.
- JR quashes Decision (rather than Order).

Right to Apply (CROW 2000) ss121A, B and C.

1. s118ZA and s119ZA, landowners can apply for PPO.
2. On Agricultural land, scope extended to inc. forestry, horses and any land of a prescribed description.
3. LA can recover costs in full.
4. Applicant can appeal to SoS, under certain circumstances.
5. Balance of presumption against not substantially inconvenient ... Shifting weight to interests of applicant and expediency tests.

So, as I mentioned earlier, a largely if not entirely deregulatory feel and while some lobbies still have some concerns, either that not enough is being done or conversely too much is!, the very positive level of consultation done via the SWG and the level of agreement they reached is hopefully out weighing any negatives and staving-off any obtuse late amendments.

From my point of view, as LA resources diminish, the sooner we can get faster, more efficient and streamlined but balanced processes in place, the better for everyone concerned, while there are at least some LA officers still in post to implement them.

R Cuthbert
20th January 2015