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To: **Secretary of State, DEFRA**

**COUNTRYSIDE AND RIGHTS OF WAY ACT 2000
EXTINCTION OF UNRECORDED RIGHTS OF WAY ON 1 JANUARY 2031**

Summary

I am writing on behalf of the Kent Countryside Access Forum to urge the Government immediately to abolish the cut-off date of 1 January 2031 after which, as the law now stands, most rights of way that existed prior to 1949 that are not yet recorded on a definitive map will be extinguished.

Background

The National Parks and Access to the Countryside Act 1949 required surveying authorities to prepare definitive maps and statements to put beyond question the status of the public rights of way recorded on them. The preparation of these maps was a haphazard process during which many rights of way were omitted. Until the Countryside and Rights of Way Act 2000 ("CROW") there was no time limit for making an application to have an omitted route added to the map or a route included on the map upgraded, for example from a footpath to a bridleway. Making a successful application is a complicated process requiring considerable research and collection of evidence. The work was undertaken primarily by volunteers and as the end of the last century approached relatively little progress had been made.

The then Government decided to accelerate the process by setting a time limit and providing resources from the Countryside Agency (now, Natural England) to assist with the work. Even with additional resources, the task was recognised to be a demanding one and a period of 25 years was allowed for its completion.

Unfortunately, the difficulty of the task was greatly underestimated, and Natural England withdrew the professional input into completing the record. Since then, volunteers have once again been attempting to complete the task and as the cut-off date approaches the sense of urgency has increased. Much work is now proceeding under the auspices of organisations such as the British Horse Society and the Ramblers' Association, but it is still being done almost entirely by volunteers. An exercise undertaken by the Ramblers last year identified up to 49,000 miles of path that appeared on historic maps but not on the definitive maps. While the total mileage in respect of which realistic claims will finally be made will no doubt be substantially less than this, the work still has to be done to sort the wheat from the chaff as well as the work spent on progressing promising cases.

The case for abolishing the time limit is straightforward:

- It is now clear that the scale of the task was grossly underestimated when Parliament set a limit of 25 years.
- A full eight years were lost while people waited in vain for the Countryside Agency, and then Natural England, to fulfil its obligations.
- The Ministerial commitment to funding, given at the time of the passage of the 2000 Act through Parliament, has not been honoured.
- Having abandoned its attempt to complete the task Natural England set up a Stakeholders' Working Group that produced a report with recommendations for procedural changes to facilitate progress that were intended to be introduced as soon as possible after it reported in 2010. Although some of the recommendations were included in the Deregulation Act 2015, not one has yet been brought into force. Further postponement of the cut-off date is required to compensate for this further delay, now over a decade since the recommendations were made.
- Volunteers still have no clear idea of what unrecorded ways will be excepted from extinguishment, making prioritisation next to impossible.
- The work of volunteers, which involves checking paths on the ground and visiting public archives to examine historic maps and other documents, has been severely curtailed because of the Covid-19 outbreak with the consequent restrictions on movement and closure of archives.
- It has become increasingly clear that local authorities lack the capacity to respond promptly to the flood of applications they are likely to receive as 31 December 2030 approaches.

It is worth noting that the Welsh Government has signalled its intention to abolish the cut-off date in Wales so that there would no longer be any deadline for the correction of definitive maps there.

It is also worth recalling that the previous UK Government originally accepted the case for abolition of the cut-off date but then reversed its decision, promising instead only a deferral of the cut-off date from 1 January 2026 to 1 January 2031 – the maximum deferral possible by regulations alone.

Why it Matters

In Kent an exercise quite separate from the national project mentioned above has been undertaken by the local Ramblers to identify anomalies in the definitive maps. These include:

- paths terminating at parish boundaries,
- public rights of way linked to each other and to public roads by routes shown as white tracks on the Ordnance Survey map over which there must be a right of way but none is recorded,
- bridleways/byways which link at one end only to footpaths
- paths that terminate some distance short of a highway they are clearly intended to join.

Around 200 of these have so far been identified in Kent and are under investigation; when the cut-off date passes, those that the tiny band of hard-pressed volunteers have not yet fully processed will be lost and some existing paths may become unusable. Most of these anomalies are in addition to Kent's share of the 49,000 miles identified by the Ramblers' national project.

One of the few positive outcomes of the Covid-19 crisis is that so many more people have discovered the benefits of walking and riding on the path network that is such a special part of England's rural, and in some cases urban, heritage. In some places the network is reasonably adequate but in others the provision is poor. The position can vary considerably between one parish and another, depending on the diligence of and landowner influence on the parish councils who originally drew up the definitive maps. To ensure adequate provision for increasing numbers of walkers and riders, something to be encouraged for many reasons including the impact on physical and mental health, the omitted routes need to be restored and the most poorly provided areas brought up to the standard of the best.

It is also worth noting that the only benefit of the cut-off date, giving certainty to landowners over the rights of way crossing their land, has not materialised. Indeed uncertainty has been increased because of the thousands of applications that have been made to record omitted paths that at present rate of progress will take many decades to resolve unless improbable amounts of money are provided for councils and the Planning Inspectorate to carry out the work

Conclusion

The proposal to set a date for extinguishing rights of way not by then recorded on the definitive map was predicated on the assumption that all those rights of way could be identified and recorded in time. That assumption was clearly incorrect and so the proposal should be abandoned. Exercising in the great outdoors is a huge contributor to health and wellbeing and to the rural economy.

Here is an opportunity for the government to support both the access and the health agendas at negligible cost. Kent Countryside Access Forum calls upon the UK government to follow the lead of the Welsh government and repeal this flawed measure to extinguish thousands of miles of rights of way in England.

Yours sincerely

Jeremy Boxall

Chairman

Kent Countryside Access Forum