

Extracts from The Hobhouse Report

Report of the Special Committee 1947 "Footpaths and Access to the Countryside"

Cmd. 7207.

"Under our terms of reference we are concerned with all public rights of way except those for vehicles, i e. public roads or carriageways. We are not of course concerned with private rights of way, such as a path used by owners over their own land or easements over adjoining land, which the public have no right to use."

"Rights of way are as follows:-

(i) Footpaths, which afford a right of way for pedestrians only. Footpaths running alongside public roads form part of such roads, and are not dealt with in this report. Nor are we concerned with any alternative to these 'road footpaths', such as footpaths on the field side of a road boundary, or any other deviation of such footpaths from the road, which Highway authorities or the Ministry of Transport may contemplate. It should however, be noted that a right of way for pedestrians may lie along the line of a private road; with such we are concerned.

(ii) Bridleways, which afford a right of passage for riding animals, as well as for pedestrians. Bridleways, although no longer used for their original purpose of serving pack transport or travellers on horseback, have recently become more important through the greater popularity of riding for recreation.

(iii) Driftways, which afford a right for cattle, as well as for riding animals and pedestrians. Cattle includes all animals capable of being driven. Driftways are now of less importance for their original purpose than formerly, although for walkers and riders they may be of considerable value, being usually unmetalled and not legally open to motor cars."

"58. We deal in this chapter with the important subject of maintenance and repair, the existing law of which is complicated and incomplete, and with our recommendations for

its simplification. 'Maintenance of footpaths' covers not only surface repair but also the upkeep of any stiles, gates and footbridges needed for their use, any drainage required to keep them reasonably dry, and provision for moving from time to time any natural obstructions, such as fallen trees or excessive growth of vegetation, which might impede the use of the footpaths.

Powers and duties to maintain are vested sometimes in an authority, sometimes in an individual, and are sometimes permissive and sometimes obligatory. There are various remedies to enforce the carrying out of maintenance. All these matters are set out below.

MAINTENANCE BY THE HIGHWAY AUTHORITIES

59. The Common Law liability of the inhabitants at large for the maintenance of highways was ordered by the Highways Act 1835 to be exercised by the Surveyors of the highways. Today, the functions of the surveyors are exercised by the highway authorities, i.e. in rural districts by the county councils and in borough and urban districts by borough and urban district councils.

60. This Common Law liability of the inhabitants at large for the maintenance of highways remains of course unaffected by the change which has taken place in the machinery for the exercise of this duty. But a number of highway authorities have invoked Section 23 of the Highways Act 1835 as justifying the view that highway authorities are not liable to maintain all rights of way referred to in our terms of reference. That Section states that no 'Road or Occupation way', dedicated or created after the 20th of March 1835, shall be deemed to be repairable by the highway authority unless the individual or body dedicating it gave notice to the authority and made it up to the prescribed width in a manner to the satisfaction of the Surveyor and of two magistrates. These conditions have seldom been observed and it seems that the Section was never intended to apply to public footpaths, bridlepaths and driftways. As Section 23 of the Act refers only to roads and occupation ways. A prima facie duty to maintain all other rights of way would appear to rest upon the highway authorities. On these interpretation footpaths, bridlepaths and driftways would not be comprehended in the description 'roads' or 'occupation ways' used in section 23 of the highways act 1935. This matter of legal doubt will however have no further practical importance if the recommendation contained in paragraph 66 is adopted.

MAINTENANCE BY PRIVATE INDIVIDUALS

61. *When highways are created by Statute it is possible for an obligation to maintain them to be laid upon private individuals who benefit from their creation. Furthermore, apart from statute there are three grounds upon which private individuals or bodies may be held liable to maintain a right of way. None is of much practical importance, but they are briefly mentioned here.*

(a) Ratione Tenurae, by reason of tenure of certain land, normally the adjoining land;

(b) Ratione Clausurae, by reason of enclosure, which arises when an owner fences a right of way from which the public have been accustomed to deviate when it becomes founderous i.e. passable.

(c) Ratione Nocumenti, by reason of injury. When the level of a right of way is raised by virtue of some statutory authorisation, e.g. a railway line is constructed across it, the body responsible must thereafter restore and maintain such right of way, unless the Statute contains some contrary provision.

PROPOSALS FOR FUTURE MAINTENANCE

65. *The obligation to maintain and repair rights of way will only, in our view, be properly discharged in the public interest if, without prejudice to existing permissive powers, the statutory obligation is placed unequivocally on highway authorities. The present state of the law is unsatisfactory on account of its obscurity and some highway authorities at present deny any liability rests upon them to repair and maintain rights of way where these take the form of footpaths bridleways or driftways (see paragraph 60).*

66. *We recommend therefore that highway authorities, namely, county borough councils, county councils in rural areas, and borough and urban district councils in their areas, should expressly required by statute to repair and maintain all rights of way.*

67. *in view of the importance of all highway authorities, both large and small, carrying out this new comprehensive duty to maintain all rights of way, we recommend that, in the event of neglect on the part of any highway authority, the Ministry of Transport should, as the central supervising authority for highways, should be empowered to make an Order directing such authority to carry out the work, or alternatively to make such*

arrangements as he thinks fit for carrying out the work at the expense of the authority in default.

68. The surviving liabilities of individuals for repair and maintenance of rights of way to which we referred in paragraph 61 are of little significance and difficult to establish. The trouble of ascertaining the degree of liability and of supervising the work of maintenance is frequently more costly in time and money than prompt repair by the authority. We recommend, therefore, that they should no longer be enforceable."