

Extracts from Government Circulars on Rights of Way issued to parish councils in 1950.

Appendix 2.1c

1947 Report to Select Committee – Hobhouse Report – Rights of Way

1. This Select Committee was formed to examine the existing provisions relating to the maintenance of public rights of way and to identify ways in which their protection could be strengthened. The Committee found that the maintenance of the privately maintained roads (described below) was a particularly grey area and recommended that in future highway authorities should be responsible for their upkeep.

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 Nocuenti, 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.

1.2 This recommendation was duly incorporated into the NPAC Act 1949, and a new classification of right of way was created to facilitate their protection, namely: 'Roads used as Public Paths' (RUPPs).

1.3. Part IV. Schedule 27.6 defined the meaning of the expressions contained in the Act.

NPAC ACT 1949 Part IV. Section 27.6

"'public path' means a highway being a footpath or a bridleway."

'road used as a public path' means a highway, other than a public path, used by the public mainly for the purposes for which footpaths and bridleways are so used."

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1950 Ministry of town and country planning Public - Circular no. 81

2. In February 1950 the Ministry of Town and Country Planning issued a guidance note (Circular No. 81) to all Surveying Authorities in England and Wales, explaining how to carry out their initial survey of rights of way. This was distributed to all borough, district and parish councils within their areas.

2.1. Acknowledging that RUPPs were vehicular highways used by the public, the circular introduced two new symbols to represent them on the draft maps and walking schedules prepared by the local councils; C.R.F. Cart roads for mainly used as footpaths and C.R.B. for cart roads mainly used as bridleways. (See transcript below)

2.3. This could imply that the local authorities were not obliged to take over the maintenance liability for vehicular traffic. However, the advice given for filling out the Schedule stated that the legal presumption was that the public right of passage extended to the whole width between boundaries, which should in effect have preserved their integrity as vehicular highways.

NPAC ACT 1949

Ministry of town and country planning Public

Circular no. 81

Para 3 (m) "Highways that the public are entitled to use with vehicles but which, in practice, are mainly used by them as footpaths and bridleways, should be marked on the map as 'C.R.F. or C.R.B. as explained in section 4 below, with a note in the schedule also that their main use is as a footpath or bridleway as the case may be."

THE USE OF SYMBOLS

Para 4 "The use of uniform symbols on the maps will obviously facilitate the work of the survey. Nearly all the following have been used for a number of years and have been found satisfactory, and it is suggested that they be adopted. New composite symbols have been devised in two cases only (CRF and CRB) to meet the present purpose."

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4. SYMBOLS TO BE USED IN MARKING PATHS

(Mark the symbols in CAPITALS)

MARK OF PATH					KIND	
Footpath.....FP	Bridle	Road	(including	Driftway	for
cattle).....				BR		
Public Carriage or Cart Road			mainly		(1)	Footpath
CRF						
Or Green (unmetalled) Lane			used as		(2)	
Bridleway CRB"						

Para 5 "THE SCHEDULE

(f) If the surveying authorities require particulars to be furnished of the width of any public paths, these should be given in the schedule, as far as possible. If, for example, a way was set out by an Inclosure Award as a public footpath 4 feet wide, or a public bridleway 8 feet wide, these widths can and should be specified.

Again, there is a legal presumption (in default of evidence to the contrary) that where a way runs between defined boundaries such as hedges or walls, the public right of passage extends over the whole width between those boundaries, and this width can also be specified. Where, however, a path runs in the open, though the width dedicated to public passage may be, and often is, greater than that of the 'beaten' track, it will seldom be possible to ascertain exactly what the greater width is, and in such cases no width should be stated, unless proof of it can be produced which would satisfy a court of law.

1950 Parish Councils Advisory Handbook N0.8

3. In June 1950, an advisory handbook on rights of way was issued to all Parish Councils in England and Wales. It contained the following instructions on the transfer of the liability to repair all public rights of way.

Liability for Repair of Public Paths

"Section 47 of the Act marks a milestone in the long history of the maintenance of public rights of way, for by this section the legal responsibility for maintaining all public paths, which has been stated to also include the removal of obstructions, is placed absolutely with the Highway Authorities."

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1950 Ministry of town and country planning - Circular No. 91

4. On the 30th June 1950, a further circular was issued to all local authorities in England and Wales, to assist Surveying Authorities with further stages of the survey. It reaffirmed that higher rights than footpath or bridleway rights existed over the RUPPS, existed or were alleged to exist.

"6. The phrase 'road used as a public path' which is defined in Section 27 of the Act is intended to describe highways such as the Berkshire Ridgeway, and other 'green ways' which are now mainly used as footpaths and bridleways, although greater public rights of passage over them exist or are alleged to exist."