

ADVICE ON  
Recording a Right of Way

The  
British  
Horse  
Society



## Recording a right of way

Applies in England and Wales

**Each highway authority (county council or unitary authority in England, county or county borough council in Wales) keeps a Definitive Map and Statement of public rights of way which is the formal legal record of the existence of footpaths, bridleways, restricted byways and byways open to all traffic. Each public right of way will have a unique reference which may indicate the parish (or district) and number of the path in that parish. The Map shows status and alignment; the Statement may be very brief, giving only status and start and end point, or it may include details of width, gates, bridges or restrictions.**

The map is conclusive evidence of any route recorded on it, but is without prejudice to the existence of rights that are not recorded, either because they were omitted when the record was first compiled, as a result of the National Parks and Access to the Countryside Act 1949, or because they have arisen since that date.

There are many errors on the Definitive Map and Statement because compiling and updating it has been a difficult and contentious process and has been chronically under-funded in local authorities. The BHS supports the work to correctly record the many bridleways and restricted byways that are currently omitted or recorded at a lower status (such as ridden routes recorded as footpath) as well as creating any new definitive routes. Many of its volunteers are strongly dedicated to the task and any more people who can contribute are welcome because it is very important to have all rights recorded as soon as possible. Certain unrecorded rights will be extinguished in 2026<sup>1</sup>.

This advice note is a brief overview of how to investigate a right that is not recorded, or is under-recorded (on the Map at a lower status) and how to prepare an application for a Definitive Map Modification Order (DMMO) to correct the record. Alternative means of adding rights to the Definitive Map are also briefly described. It is only an introduction and those interested in making applications are encouraged to attend BHS Access training days or refer to the book 'Rights of Way – Restoring the Record' (Bucks and Wadey) available from the BHS bookshop at britishhorse.com. If an application is successful, the rights will be added to the Definitive Map and Statement and preserved from extinguishment in 2026.

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<sup>1</sup> Countryside and Rights of Way Act 2000 Section 53

A guide to definitive maps and changes to public rights of way, NE 112, is published by Natural England and is available on their website, [www.naturalengland.org.uk](http://www.naturalengland.org.uk).

Permissive routes or toll rides should not be agreed over a route that is known to have unrecorded rights (as bridleway or byway) because that may jeopardise the case for recording the rights. A definitive route is preferable to a permissive one because it is protected for ever and is available to everyone because it appears on the latest Ordnance Survey maps. Any rights over routes where permissive or toll routes are proposed should be a priority for research to establish whether an application is viable.

## Other ways of adding routes to the Definitive Map

A Definitive Map Modification Order is used to record rights which have been shown to exist for a long period. They are not new rights, but are rights that have not been recorded. The process is complex and can be lengthy, so it is always worthwhile considering whether any alternative methods of recording rights will achieve the same results.

New rights can be specifically granted without any previous use of the route at all by a Creation Order or Agreement or by Express Dedication at Common Law. Express Dedication can also be used to add acquired rights that are not yet recorded, instead of using a Definitive Map Modification Order. The highway authority then updates the Definitive Map with the result of the agreement or order.

### 1 Express Dedication at Common Law

The simplest way to record a right of way on the Definitive Map is for the landowner to expressly dedicate the right of way at common law. This can be done for completely new rights or where it is believed that unrecorded rights may already exist.

If there is evidence of an unrecorded right, it is worth asking landowners if they would be willing to dedicate a right of way because this may take considerably less time and effort than making a Definitive Map Modification Order application. In addition, it saves the local authority time as it will not have to process and research a DMMO. Detailed information on express dedication is available through The Trails Trust, [www.thetrailstrust.org.uk/](http://www.thetrailstrust.org.uk/) which has published 'Creating Multi-user Public Rights of Way – A Guide for Local Groups'.

A landowner may dedicate a route by deed or proclamation and if the public then uses the route sufficiently to demonstrate acceptance of the

dedicated right, a 'legal event' creating the new right is deemed to have occurred. The highway authority must accept the legal event and add the route to the Definitive Map. The agreement does not require the involvement of the highway authority and can proceed without it, although it is strongly recommended that its Rights of Way Officers are consulted at an early stage.

Such a dedication is normally required in writing and there must be legal proof that the signatory is the owner of the land. Some landowners may find granting a dedication more agreeable than allowing a permissive route because it removes much of the legal liability for the route from the landowner.

The highway authority does not have to accept maintenance liability and with local government budgets forecast to continue to decrease for years to come, they may have policy decisions refusing any new liabilities. However, guidance from Defra<sup>2</sup> states that it would seem good practice for the authority to accept maintenance liability in conjunction with its liability to assert and protect the right of way.

If the landowner wishes to be certain that the highway authority will accept liability for maintenance (using HA80s37), he must give notice to the highway authority of his intention to dedicate at least three months before the dedication. The highway authority can decide to accept liability for maintenance after the highway has been dedicated (HA80s38).

If a dedicated route is physically unsuitable it may have to be brought up to a certain standard before the authority will accept maintenance liability.

## **2 Creation Agreement HA80s25**

A local authority may make an agreement with a landowner for the dedication of a footpath, bridleway or restricted byway (but not a BOAT). This may include payment for the dedication but not necessarily. Normally the agreement will include an agreement for the local authority to assume responsibility for maintenance of the right of way once it has been brought up to a standard the authority will accept. With reduced budgets, some authorities may refuse to enter into a creation agreement unless they can justify it in terms of their priorities.

## **3 Creation Agreement HA80s30**

Parish or community councils have separate powers to agree a creation of a footpath or bridleway (but not a restricted byway or BOAT) under section

<sup>2</sup> Letter from Dave Waterman, Landscape and Outdoor Recreation, Defra, to Paul Johnson, Natural England, on 19 November 2012

30 of the Highways Act 1980; they have no powers to pay compensation nor is the path automatically maintainable at public expense.

#### **4 Public Path Creation Order HA80s26**

A local authority can make an order to create a bridleway or upgrade a footpath to meet an identified need. Evidence of need will be necessary and the effect on the rights of persons interested in the land will have to be considered. The path will be maintainable at public expense.

Compensation may have to be paid to the landowner; any disputes about compensation are decided by the Lands Tribunal. The process is sometimes used where the owner of the land cannot be found.

The cost implications of making the order, particularly against opposition, of maintenance liability and potential compensation may make an authority reluctant to use this facility except where the need is demonstrably high, probably with safety implications for a significant portion of the public and within its priorities. Reference to those priorities and the Rights of Way Improvement Plan may assist an application.

## **Making a DMMO Application**

### **Preliminaries**

Each highway authority will have its own way of working, its own versions of user evidence forms and the prescribed forms mentioned below. It is useful to contact the authority and offer it support in working to record public rights of way accurately and fully. BHS Access and Bridleways Officers should already have established this contact.

It will hold two registers and the List of Streets, which should be consulted before beginning work as they may affect the work required and the period to be considered.

### **Register of applications**

If a route does not appear to be recorded or not at its correct status, check with the authority's Definitive Map Officer to determine whether it has been diverted, deleted or extinguished and whether an application to have the map modified has already been submitted and is waiting to be processed.

Information on modification order applications should be included in a register of applications to add, remove or change a right of way, which is available for public inspection at the authority's offices and perhaps via its website.

## Register of declarations

The highway authority will also keep and should publish on its website a register of declarations by landowners who have lodged a map and statement with the authority under Section 31(6) of the Highways Act 1980 which acknowledges rights of way over their land and prevents the deemed dedication of further public rights of way.

The date of the declaration acts as a challenge to the existence of an unrecorded and unacknowledged right, which will affect the period of time for which evidence will be required to make a case for a modification order.

## List of streets maintainable at public expense

In addition to the Definitive Map and Statement, each highway authority will have a 'List of Streets maintainable at public expense'. This is a list which a highway authority is required to maintain and keep up-to-date and available to the public for inspection free of charge. It records all the highways in its area which it is liable to maintain. (The official record is a list although authorities will probably work from a map as this is easier, but the map may not be available for public inspection or only at a charge.)

The List of Streets does not have a prescribed process for its format or maintenance so varies considerably between authorities. There is also a difference between maintainable and actually maintained which has a history of misunderstanding and has created anomalies both within and between authorities in what is shown on the List and how.

In theory, the List should include all public vehicular carriageways, whether surfaced or unsealed (Classified Roads, Unclassified County Roads, Byways Open to All Traffic, Restricted Byways) together with all Public Bridleways and Public Footpaths which are maintainable at public expense.

In practice, some authorities only record vehicular carriageways (whether surfaced or unsealed) which are NOT shown on their Definitive Map and perhaps footways and cycleways that are surfaced and maintained. Some also record Private Streets (public highways which are privately maintainable). Most show only a few, if any, of the public rights of way which are recorded on the Definitive Map. You will need to clarify what is the practice of your highway authority. It may not be consistent, even within the authority.

If the List of Streets is correctly maintained as a register of publicly maintainable routes, then it provides clear evidence that any route on it is public because it is illegal to maintain a private road with public funds. It is often taken as evidence of vehicular rights, although the latter may be

argued by some authorities who will state that it only indicates at least a right on foot. This is because it will include routes which are foot only routes and to investigate each entry on the List to define its status would be very demanding.

Some minor roads on the List of Streets are shown on modern Ordnance Survey maps as Other Routes with Public Access (ORPAs).

When checking the List of Streets it is important to see just how much of the route is recorded on the List: in some cases it may be only a section, perhaps which has been surfaced to serve a few houses at one end, and not the whole length of the road/track even though the whole route is public highway.

## Background

Under Section 31 of the Highways Act 1980 (HA80s31) or under common law it is possible to establish that a right of way has come into existence by means of presumed dedication, that is, enough use over a period of time without the landowner preventing the use, so he or she is presumed to have dedicated it. Evidence is required to substantiate a claim that the rights exist and an application is made to the local highway authority for a Definitive Map Modification Order (DMMO) under the Wildlife and Countryside Act 1981.

The DMMO application is a case put by an individual, a parish council, a bridleways group or other organisation, who produces evidence that rights exist that are not recorded and should be added to the Definitive Map and Statement. This may be rights over a route that are not recorded at all, or higher rights than those recorded, such as evidence of a bridleway or restricted byway that is recorded as footpath.

It is time consuming to prepare an application and it can take years to be processed. However, it does not depend on help or cooperation from any landowner, council or other organisation.

The application needs to show that the route has been used by the public as of right for a considerable period, either with reference to historical documents that demonstrate that the route was used in the past or by witness accounts of use, or both. Ideally, evidence of uninterrupted use for a period of at least 20 years is sought.

A case can be made using the '20 year rule' which was introduced by the Highways Act 1980 Section 31, in which evidence must support the allegation that a right of way can be presumed to have been dedicated by the landowner because of the level of use over a period of 20 years without

action by the landowner to make a lack of intention to dedicate. The 20 year period is counted backwards from the point at which use of the route was challenged. The onus is on the landowner to demonstrate that dedication was not made. A 20 year case is dependent on there being a date of challenge or 'bringing into question' the assumed public right. This is commonly an occurrence such as a gate being locked but in the absence of a challenge, the application for a modification order can comprise that point and date (Natural Environment and Communities Act 2006 section 69).

A case may also be made under common law without reliance on the 20 year rule. The period may be much less than 20 years but the greater the length of user demonstrated, the more likely it is to infer that dedication has occurred. The case can be harder to make because the onus is on the claimant to show that there has been dedication by the landowner; use alone is not necessarily sufficient evidence that dedication has occurred. A common law case does not need a point of challenge.

Whether the case is made using S31 or common law, it is still an application for a Definitive Map Modification Order.

## Making an application

There are some requirements (see below) that must be fulfilled to make a DMMO application valid. An authority is entitled to regard any application that is not completely compliant with the regulations as invalid and reject it. The rejection could happen long after the application is initially made, which could be too late to re-work the application. Therefore, members wishing to make applications are advised to have their applications checked by a BHS Access and Bridleways Officer before sending them to the authority.

Authorities will each have their own policy for dealing with applications and their own versions of the prescribed forms. To avoid any wasted time, applicants should first ensure they have the guidance and application pack from the relevant authority and to read it carefully. The DMMO application should be made on the prescribed form from the authority and should include:

- A map at a scale no smaller than 1:25,000<sup>3</sup> with the route marked accurately on it.

A copy of the current Ordnance Survey (OS) map at a scale of 1:25,000 or larger is the best plan to include with the application, with

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<sup>3</sup> Trail Riders' Fellowship and Tilbury v Dorset County Council 2012 states that a map accompanying an application should be no less than 1:25,000 and must not have been enlarged or reduced from a different scale.

the route marked on it.

It is important to be precise in marking the route, in particular where it runs in relation to a hedge or boundary.

Other maps may be used but must not be of a scale smaller than 1:25,000.

- A full description of the route with accurate start and end points, preferably using grid references.
- A list of the historical documents relied upon, together with references of their sources and copies of photographs or photocopies of the documents. This should be compiled even if the documents are not conclusive to show what has been checked.
- Copies of user evidence forms (see user evidence below).

Supply copies only and keep the certified photocopies of documents and photographs and original user evidence forms in case anything should go astray. (Bear in mind that it can take years for an application to be processed, with possible changes in staff, offices and even authorities in that time.)

It is also useful (though is not required) to supply photographs, particularly of each end of the route and, if needed, for clarification at the junction with another right of way or road and any particular feature or turning along the route.

This takes the application to the point of being 'Paragraph 1 compliant' which means it can be registered by the authority as duly made under paragraph 1 of Schedule 14 of the Wildlife and Countryside Act 1981.

The next stage is dictated by paragraph 2 of Schedule 14 and requires:

- Evidence that you have made 'reasonable inquiry' to find and notify any landowner and occupier. The Land Registry will show whether the route is on registered land, in which case its report is enough. If it is not registered, the parish council may be able to identify the landowner or occupier. If no landowner can be found, then the applicant should apply to the authority for permission to erect notices (in the prescribed form) at each end of the route. In some cases the authority will take responsibility for erecting the notices.
- A certificate in the prescribed form that notification in the prescribed form has been served on any landowner identified.

The application should be for the status indicated, on the 'balance of probability', by the historical evidence and by evidence of use (if any). Balance of probability is a legal term used to describe a reasonable

assumption on the evidence, as opposed to the 'beyond reasonable doubt' test which is applied to a criminal case.

The Paragraph 2 stage does not have to follow immediately on the issue of the Paragraph 1 documents but many applicants will complete the requirements of Paragraphs 1 and 2 in one delivery to the authority because most authorities will not register, investigate or determine an application unless it complies with both Paragraph 1 and 2.

## The Process

The authority will register the application then assess the evidence and determine whether or not it is going to make an Order. It will notify the applicant of its decision. Prior to determining the application, it is good practice for the authority to consult user bodies and the landowners, listing the evidence cited and asking for any further evidence and comments, which could result in either making an Order for a different status or even abandoning it.

If the authority has not determined the application within 12 months of receiving the certificate from the applicant that notice has been served on the landowners, the applicant may apply to the Secretary of State under Schedule 14 of the Wildlife and Countryside Act 1981 for the authority to be given a deadline for determination.

An authority following good practice should investigate fully and could decide that a claim for a bridleway status ought more properly to be for restricted byway status or vice versa and the authority is correct to make the order indicated by the evidence. Whether any individual or user group would prefer a particular status is immaterial to the tests applied by the legislation, so this is not grounds for objection. Objecting on grounds which are not relevant could possibly result in a claim of costs against the objector.

An authority may determine not to make an order, in which case the applicant may choose to seek more evidence, if that is the reason for the decision, or the applicant may, within 28 days of the service of the notice of the decision, appeal to the Secretary of State under Schedule 14 to the Wildlife and Countryside Act. The Secretary of State may refuse the appeal or instruct the authority to make an order.

If the authority determines to make an Order (or is instructed to do so by the Secretary of State), this may not be immediate – an authority will assign a priority to an application depending on its policy as it is unlikely to have the resources to make all orders immediately. A route that meets criteria of the authority's Rights of Way Improvement Plan or has implications to improve safety may raise it in the list of priorities. A case dependent on elderly witnesses

may also be escalated in some authorities, depending on their policies.

When the Order is made it is advertised with a deadline for objections and the statutory consultees (which include the BHS) are notified.

If there are no objections or representations, or the objections are withdrawn, the Order can be confirmed by the authority and comes into force. If objections are not withdrawn or resolved, the Order is referred to the Secretary of State who usually delegates the decision to an Inspector from the Planning Inspectorate (PINS).

The Inspector can deal with the order either by holding a Public Local Inquiry, or by holding a hearing for less complex cases, or by written representations (an exchange of correspondence). The Inspector may decide to confirm the order, confirm it with modifications or not confirm it. Some modifications require an order to be re-advertised, and can lead to further objection and referral again to the Secretary of State.

When the order is confirmed, notices are published, and a copy is sent to statutory consultees. The change is then recorded on the Definitive Map provided that within 42 days of the publication of the notices there has been no challenge in the High Court to the order's validity.

## User evidence

User evidence is written (or recorded oral) evidence from individuals stating that the route has been in use for at least a continuous 20 year period counting back from the date when the use was challenged or the DMMO application submitted. Each person does not need to have ridden the route continuously for 20 years, but use by several people must have overlapped to cover the 20 year period.

Quality of user evidence is very important. Evidence from a greater number of users will build a stronger case but only if the evidence of each user is true and good. This is not implying that people may deliberately lie, but memories are rarely accurate the further back in time you go, especially relating to frequency and consistency of use, width or obstructions. A case will be weakened by users whose evidence can be shown to be doubtful, perhaps because they had forgotten a period when they could not have ridden the route, so it can be better to have fewer witnesses but with unshakeable evidence.

Use must have been by the public (riders for a bridleway and carriage drivers and other non-motorised users for a restricted byway) 'as of right' – that is openly and without permission.

Use by employees, tenants, clients or invited guests of the landowner (such

as the hunt) is usually considered to be by permission and not as of right. However, although their use of the path may not count towards the 20 years, they may still be able to give evidence of the reputation of the path. 'As of right' is a term that has changed in interpretation over the years. It means use openly and at any time, as if it was a right of way. It does not mean that the user had to have believed it to be a right of way.

If the landowner has made it known during the 20 years in question that he did not intend to dedicate the route, for instance by erecting signs (such as 'No Public Right of Way') or by locking a gate, then the use will not have been as of right and if the application is based only on that use, it will fail. Any intention by the landowner not to dedicate must have been evident to users.

If the route has been in use as a permissive route, or a toll ride, or by virtue of a Countryside Stewardship or Environmental Stewardship Scheme, the relevant user evidence will have to start going back for 20 years from the date the permissive route or toll ride was opened or the stewardship scheme started. In theory, such permissive routes should not be accepted along paths which have historical higher rights, but it does happen.

Highway authorities usually prefer evidence to be submitted on their own Evidence Forms as this makes it easier to compare and assess. The authority should supply these forms plus maps covering the relevant areas. The BHS also has a sample form. This does not preclude evidence in other formats, such as letters or recordings (which need a transcript, signature, and a map which should also be signed), and a witness may use whatever wording they find convenient. It is most important that the evidence should be in the user's own words, and thorough in depicting the exact route and the time period it was used. It is best if the form or letter is in the user's own handwriting. Witness statements from elderly members of the community who saw horses and riders and/or carts using the route are also pertinent.

Use of maps marked by users can be of debateable value as very many people have difficulty reading a map and it is frequently demonstrated that the route they think they have used is not what they have marked on a map. If a map is used, it will be necessary to demonstrate that users were able to relate the route used to that shown. Photographs of the route can be invaluable here and reference to them incorporated in the witness statement.

Should the DMMO be taken to a Public Inquiry, it is very important for a number of the people who gave the evidence to attend and give their evidence verbally. This can be vital to the success of an order and lack of witnesses at an Inquiry immediately reduces the strength of the evidence. It is good practice to establish at the outset that those giving evidence will attend an Inquiry when the time comes.

## Finding users

Finding users may be simple if you are very familiar with the area and know a lot of riders and older residents. To find more witnesses:

- Ask every witness you find if they can suggest others and follow those up.
- Parish councils may know of older people, whether still in the area or moved away, who know the route.
- Bridleway Associations may be able to help.
- The local hunt is very likely to have current or past members who know the route.
- Livery yards may have noticeboards or websites where you could appeal for witnesses.
- Saddlers, vets, farriers and other local equine services may know of possible contacts or be able to promote your need for witnesses.
- Village and village hall noticeboards may be appropriate places to put a poster asking for past users.

## Documentary evidence

Applicants are strongly recommended to consult and follow the guidance in the book 'Rights of Way: restoring the record' by Sarah Bucks and Phil Wadey, published by Bucks & Wadey. It is available from the BHS bookshop, [www.britishhorse.com/products/rights-of-way---restoring-the-record.html](http://www.britishhorse.com/products/rights-of-way---restoring-the-record.html). The book makes the process of checking documentation and building a strong case much easier, especially for anyone new to the process.

Documentary evidence is collected by visiting various archives and libraries to check historical maps and documents. Some maps are available online, which helps. The aim is to show that the route was used by the public in the past as a bridleway or higher status. Evidence from Acts of Parliament and other legal procedures carries the most weight; maps sold for use by travellers are useful; and Ordnance Survey records will, as a minimum, show the physical existence of a track.

Most highway authorities' rights of way departments have a list of primary documents that should be checked. These documents should be available to view, free of charge, and can be inspected at public records offices or libraries. There may be a charge for using a private camera or photocopying. The list can be extended, but if, after looking at these documents, there is little evidence that the route was a public right of way at the time,

then checking more historical documents is unlikely to be fruitful.

County council or unitary authority Public Record Offices hold inclosure awards, deposited plans (of railways, canals and turnpike roads), Quarter Sessions records (which will include some records of maintenance at the public expense and also records of extinguishments and diversions in earlier centuries), county maps, some tithe maps, sales documents (from the auction of farms and large estates), parish histories and possibly records of farm valuations.

It is advisable to check the Quarter Sessions records for earlier diversions and extinguishments before devoting time and resources to other archival research. Many also hold early Ordnance Survey (OS) maps, though the collection may be less complete than at the British Library.

Highway authorities' rights of way departments hold background information relating to the making of the definitive map (known as the 'walking survey' or 'parish return'). They may indicate CRBs (cart roads used as bridleways) and CRFs (cart roads used as footpaths) because the original guidance to councils for compiling the Definitive Map defined these terms as 'public carriage or cart road, or green unmetalled lane mainly used as a footpath or bridleway'. These offices may also have 'Handover maps' which show the highways as they were in 1930 when responsibility for them was passed to the county councils. They may also have records from the Rights of Way Act 1932 which began the process of recording rights of way.

The National Archives in Kew, London, holds records from Government Departments. Some of the most important records are those from the 1910 Finance Act. These records may show a public right of way over a land-holding, although declaring rights of way was not a requirement, if it is there, it is substantive evidence. The records vary considerably – some will simply state the amount of abatement given for a public right of way, others state xx yards of bridleway or footpath. If a track is shown excluded from land-holdings, it would suggest that it was used by the public. (There are a few exceptions, such as land owned by the Church, the Crown, or Ministry of Defence.)

The National Archives also holds some Ordnance Survey records, especially those relating to parish boundaries, and the OS Object Names Books which give a description of features named on the Second Series Ordnance Survey maps. The National Archives also holds the tithe maps and associated papers.

The British Library in Central London holds records that can be useful, especially the First Edition County Series Ordnance Survey Maps and Books of Reference. Some of the records available will only cover some parts of the country, and there will be different records applicable for different counties. The Parliamentary Archives at the Houses of Parliament hold Acts

of Parliament, deposited plans and records of parliamentary proceedings.

These records can all support the evidence, but in some cases the records were not compiled or have been lost or destroyed. In some parts of the country additional different records may be available. The aim is to look at as many legitimate sources as possible and produce enough to show that, on the balance of probability, the route has been in public use. Once collected, the historical evidence should be listed chronologically and it should be possible to see when the route came into existence, and its status and history since then.

It is necessary to be wary of records where multiple copies exist, such as tithe or inclosure. There is usually one document that is designated as the original, all others being copies. Most designated originals are held at the National Archives. Be particularly careful to check Kew copies of the Finance Act records, as the local records can be different, and Tithe commutation.

There are now commercially reprinted maps of the older OS maps, covering the first edition OS maps (around 1805 to 1820), the 'Revised new series' (around 1900), and the 'Popular edition' dated 1919. These are currently published by Cassini Publishing ([www.cassinimaps.com](http://www.cassinimaps.com)) and are useful in checking at what stage the route appeared. They are re-projected and rescaled to match the current Ordnance Survey Landranger Maps.

## Submitting the application

There is a case for delivering the DMMO application in person and asking that it be checked to ensure that it is valid. All applications must be signed and dated. Many are submitted in the name of an organisation such as The British Horse Society or a bridleways association, so that if an individual applicant died or moved away the application could still be carried on and the surveying authority would still have the necessary point of contact.

## A Final Consideration

Even if a landowner has said he or she will not consider an express dedication at common law, at any stage in the process of gathering evidence, when it is reasonably clear that a right can be shown to exist, it is worth approaching the landowner(s) again to discuss the evidence and the possibility of the route being expressly dedicated to avoid the need for the DMMO process. Although dedication is presumed to have occurred, a formal dedication in writing will declare the rights with potentially a lot less effort from all involved than using the DMMO process.

An express dedication at common law is a legal event for the purposes of

section 53(2) and 53(3)(a) of the Wildlife and Countryside Act 1981 and the highway authority must make a legal event order to record the route on the definitive map and statement. The highway authority can elect to adopt the new route as publicly maintainable.

## Further Information

This advice note is a brief overview of how to investigate a route that is not recorded, or is recorded as a footpath, and prepare an application for a Definitive Map Modification Order (DMMO) to correct the record. Those interested in making applications are encouraged to work with the BHS through its volunteers and training days to ensure that applications are of good quality and most likely to succeed.

Contact the BHS Access team (details below).

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For more information on The British Horse Society's rights of way work contact:

Access and Rights of Way Department,  
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The logo for The British Horse Society, featuring the text "The British Horse Society" in a serif font, with "The" on the first line, "British" on the second, "Horse" on the third, and "Society" on the fourth. The text is white and set against a dark red square background.