



**PREVENTING NEW
PUBLIC RIGHTS OF
WAY: SECTION 31(6)
HIGHWAYS ACT**



Preventing New Public Rights of Way: Section 31(6) Highways Act

Access is, and has always been, a complex and contentious issue for land managers, farmers and landowners across the country. Covid-19 has exacerbated this in some areas due to a significant increase in the number of new visitors visiting the countryside. This has prompted the NFU to review the support we offer to members in relation to access and look at what we can do to improve this further. This briefing outlines some of the background issues and the package of support we have developed to support you, our members. This is in the form of independent professional advice through the NFU's Legal Health Check Service delivered through the NFU Legal Panel Firms, plus a financial contribution towards the legal costs of a Section 31(6) application to prevent new public rights of way (PRoW) being claimed on your land.

Background

Access is a contentious issue for NFU members. During the strictest part of lockdown this was no exception with swathes of new visitors visiting the countryside. Whilst many of those visitors will have behaved responsibly, there has been an increase in the number of members contacting the NFU as a result of issues such as trespass. Repeated trespass is a particular concern for NFU members due to the ability of members of the public to create new rights of way through a period of use.

In addition to what is happening on the ground, a new book has been published¹ promoting the right to trespass and encouraging people to access more land by trespassing. Furthermore, some user groups actively encourage their members to trespass because of the potential to create new rights.

Preventing New PRoW

Often, applications to add new rights of way to the Definitive Map come as a complete surprise to the landowner, and once the use has been established it can be difficult for landowners to defend such claims. Unfortunately, it often takes a considerable period of time to deal with these applications, and many local authorities have a backlog of applications to deal with. Natural England has reported that there is currently a backlog of applications waiting to be processed by local authorities, that could take 13-years to complete, totalling around 4,000 paths. The costs of opposing such applications can be significant, particularly where there is a public inquiry to determine the application.

¹ <https://www.theguardian.com/books/2020/aug/10/the-book-of-trespass-by-nick-hayes-review-a-trespasers-radical-manifesto>

There are a number of ways that landowners can protect their land from applications to register new PRowS, including some relatively simple steps such as displaying signs or placing (safe) obstructions, although landowners still need to be able to prove that these steps have been taken. In addition, landowners can prevent new PRow being claimed on their land by depositing a map declaration that they do not intend to create any new PRow over their land with the local highway authority. This is often referred to as a Section 31(6) application (a reference to s.31(6) of the Highways Act 1980).

Landowners can make a Section 31(6) application by depositing a map and statement with the local authority, showing all of the rights of way they accept exist over land in that local authority's area. These deposits need to be kept up to date and renewed periodically in order to ensure that the protection offered is retained. Once this has been done, the onus would then be on a user to prove that, notwithstanding the fact that this declaration had been made, the landowner did in fact intend to dedicate a new right of way; this is likely to be challenging, especially if the landowner has taken steps to keep the declaration up to date.

These declarations only prevent claims that new rights have been acquired after the date on which they have been deposited; they cannot prevent claims relating to historic rights of way and they cannot prevent claims that new rights were acquired before the deposit was made. Nonetheless, they can be a valuable tool for landowners, particularly those who experience regular incidents of trespass on their land. The procedures differ slightly in England and Wales, and in England the map and declaration prevent village green rights as well as rights of way. Further information can be found in NFU Business Guide 401E for land in England or 401W for land in Wales.

NFU support for members

We already have comprehensive Business Guides for England and Wales included in this pack covering the procedure for preventing new rights of way being acquired over land. Furthermore, the Specialist Advice Team at NFU CallFirst offer free initial legal and professional advice to NFU members about issues relating to public rights of way and access to land, and can arrange a referral to one of the NFU's Legal Panel Firms if further independent advice or action is necessary.

However, due to the current anxiety with members in this area, and the increasing emphasis on the acquisition of rights through a period of use by some user groups, the NFU has decided to increase awareness amongst members about preventing new rights being created on land. To that effect, members who would like to make a Section 31(6) deposit, if they consider making such a deposit would be beneficial to them, can use the services of our Legal Panel Firms under the recently launched Legal Health Check Service on the next page.

NFU Legal Health Check Service

The NFU Legal Panel Firms are offering a free initial “Legal Health Check” service to all Farmer & Grower members. The service aims to help identify and highlight any potential issues, legal gaps or other matters members might want to address to help secure their farming, growing or diversification businesses. The Legal Health Check can also significantly help underpin business resilience. We are happy to report that this member benefit has now been expanded to include identifying whether a Section 31(6) deposit should be made to protect members’ land from new PRow applications. The firm will then provide a quote for carrying out the work, which will be at their standard hourly rates (with a 12.5% NFU discount applied). Alternatively, it may be possible to agree a fixed fee directly with the firm before any work is done.

LAS Special Offer

If, following the Legal Health Check, members who subscribe to the Legal Assistance Scheme (LAS) wish to commission the Legal Panel Firm to make the Section 31(6) deposit, they can apply for a financial contribution of up to £250 towards the costs*. This offer is currently available until 31 December 2021. The NFU believes this offer is a fantastic benefit for our members and could help to avoid claims that public rights of way have been acquired over your land through a period of use in the future.

For more information about the above member benefits, contact NFU CallFirst on **0370 845 8458**.

*Normal NFU Legal Assistance Scheme rules apply.

Disclaimer: Whilst every reasonable effort has been made to ensure the accuracy of this information and content provided in this document at the date of publication (June 2021), no representation is made as to its correctness or completeness and no responsibility or liability is assumed for errors or omissions. The NFU acts as the third party in relation to member discount offers and reserves the right to change or remove these offers at any time. Terms and conditions may apply to professional services and member rewards, which form part of the membership offer.

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