

Circulation: NFU Members

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Historic and Unrecorded Public Rights of Way

Background:

- The **National Parks and Access to the Countryside Act 1949** requires local authorities to keep an official record of **public rights of way** (PRoW) known as a 'definitive map'.
- The **Countryside and Rights of Way (CRoW) Act 2000** sets out the process for registering old, unclaimed historic PRoW on the definitive map.
- The CRoW Act introduced a provision for a cut-off date of **1 January 2026** for the recording of historic rights of way.
- User groups (representing the interests of hikers, cyclists, horse riders, etc.) actively campaign to save 'historic paths' but in reality many 'lost paths' have not been used since before 1949 & could go through the gardens of family homes, working farmyards or commercial premises.
- Applications to amend the definitive map are made through a **Definitive Map Modification Order** (DMMO) to the local authority.
- These claims can cause significant distress to landowners, and there is also a significant backlog of applications waiting to be determined. Claims in some areas are taking more than 20 years to resolve.
- A **Stakeholder Working Group** (SWG) (including the NFU, other landowner groups, landowners, access groups & local authorities) worked on the issue for over a decade to agree a package of measures to be implemented by 2026 to deal with the situation. Much of this was set out in the **Deregulation Act 2015**.
- The SWG reached consensus on a consistent and balanced package that would only be effective if implemented in full.
- Since 2015, Defra have failed to make progress on implementing the package prior to the 2026 deadline.

Defra decision 2022:

- On 16 Feb 2022 – with no notice, Defra announced it would backtrack on the agreed process and only progress part of the agreed package: two of the Statutory Instruments (SIs) ("Right to Apply" & "Cost Recovery" – see below). To allow this to happen, Defra will repeal the 2026 cut-off date. All other parts of the reform will be reviewed by Defra and improvements may be made to processes at a later date
- On 25 Feb 2022 – Defra provided a high-level timetable of target dates:

Activity	Target Date
Drafting of SIs to incorporate updates/ questions/ comments	Mid-March
Share draft SIs with SWG	Late March
Convene task and finish groups to finalise SI drafts and guidance	Early April
Convene full SWG to agree SI and guidance drafting	TBA depending on when task and finish group is finalised (Late May target)
SIs laid	Before Summer Recess (or soon after when Parliament returns)
Regulations in force and guidance published	By End 2022

NFU position

The 2026 cut-off agreed in the CRoW Act 2000 was a red line for farming and landowner groups to remove the uncertainty that impacts farming businesses and the mental wellbeing of NFU members. It also allowed the debate to move from one of historic claim and counter claim to one focused on PRoW improvement, ensuring we have a network fit for the future.

On 18th February 2022, NFU & CLA Presidents sent a letter to the Defra minister, Lord Benyon, asking for an urgent meeting to express how this extraordinary change in policy will provide greater ongoing uncertainty for all farmers and landowners across England.

The NFU & CLA are asking Defra to reverse this decision and to implement all the reforms, keeping to the 2026 deadline.

Impact on NFU members:

- Disappointingly this is being promoted as a “victory in the battle for public access to the countryside” by user groups – including Open Spaces Society and Ramblers. This goes against the spirit of consensus that was a key part of the SWG.
- The repeal of the 2026 date, and no clear timescale for implementing the rest of the reforms causes continued uncertainty for farm businesses.
- For NFU members this is little more than a continuation of the status quo, leaving them open to out-of-the blue claims indefinitely and the definitive map could therefore never truly be described as “definitive” as a result.
- Scrapping the cut-off date means user groups are now free to clog the system with more claims to reinstate historic PRoW, many potentially unrealistic or spurious.
- Claims can take months, can hang over NFU members for a long time and members cannot make an application to divert or extinguish the PRoW until that process is complete.

Statutory Instruments

The SIs Defra will take forward are:

- **Right to Apply:** This regulation extends the categories of land to on which diversion and extinguishment applications can be made under sections 118ZA and 119ZA of the Highways Act 1980 and prescribes a form for these applications.
These provisions are useful for farmers as these provisions remove some of the barriers in the main extinguishment and diversion provisions, and there is a greater onus on local authorities to deal with these applications more promptly.
Presumptions guidance (developed alongside the SI) will encourage local authorities to remove PRoW, wherever possible, from premises where privacy, safety and security are of a significant concern, including family gardens and working farmyards.
- **Recovery of Costs:** This gives a local authority the power to impose charges on a landowner that applies to extinguish or divert a PRoW.

The full set of draft SIs (originally produced in 2016) were:

- Right to Apply Regulations
- Local Authority Cost Recovery Regulations
- Deregulation Act 2015 Commencement Order (relevant provisions only)
- Exceptions Regulations
- Consolidated Procedures & Modification Consent Order Regulations
- DMMO Transitional Regulations
- Inquiry Procedure Rules Regulations
- Designation of Useful Rights of Way (Temporary Protection) Regulations
- Correction of Obvious Administrative Errors Regulations