Title:
Simplifying & streamlining rights of way procedures

IA No: Defra 1389

Lead department or agency:
Defra

Other departments or agencies:
Local Authorities and the Planning Inspectorate (PINS)

Impact Assessment (IA)

Date: 23/04/2013

Stage: Final

Source of intervention: Domestic

Type of measure: Primary legislation

Contact for enquiries: Dave Waterman

Summary: Intervention and Options

RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
£23.3m	Negligible	Negligible	Yes	Zero net cost

What is the problem under consideration? Why is government intervention necessary?

England's network of public rights of way (PRoW) is a significant part of our heritage, the primary means by which people access the countryside/engage in outdoor recreation and a way of providing for various forms of sustainable transport. The processes for recording and altering PRoW are complex, slow and resource intensive. The right of access is a public good provided through common law, Government has a role in determining how the right is regulated. The current system for recording rights of way on the definitive map and statement could be made more efficient, this would allow more rights of way to be recorded (or the same level maintained through current economic climate). Government intervention is required in order to introduce de-regulatory reforms to streamline and simplify the legal and procedural processes.

What are the policy objectives and the intended effects?

The objective is to streamline and simplify the legal and procedural processes and reduce other barriers to recording rights of way on the definitive map and statement and thereby reduce the costs of doing so. Some of the process improvement are also to be applied to the procedures for altering and extinguishing PRoW measures to reduce the costs and maintain consistency with the procedures for recording PRoW.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The preferred option is to implement a number of reforms which will simplify and streamline the current processes around rights of way. Specifically these measures are

Part 1: simplifying the processes for recording existing rights of way
Part 2: simplifying the process for creating, extinguishing and diverting public rights of way (collectively known as public path orders (PPOs))

These changes are compared to a business as usual position whereby the current processes remain in place.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 12/2016

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** No	**Medium** No	**Large** No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** n/a	**Non-traded:** n/a	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Richard Benyon. Date: 26/04/2103

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2010	PV Base Year 3	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 16.7	**High: 28.6**	**Best Estimate: 23.3**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a		n/a	**n/a**
High	n/a		n/a	**n/a**
Best Estimate	0.037m		0.002m	**0.057m**

Description and scale of key monetised costs by 'main affected groups'

The main cost from these measures is the cost of a shift of burden to the courts (from the proposals 17 & 18 which allow applicants to seek court orders when local authorities take too long to decide applications) this cost will be borne by the applicant or landowner and is estimated to be 15 cases per year with a court charge of £200 per case, this is not viewed as a net cost to applicants as they only take the case to court if the benefit to them is greater than the cost.. It is believed that very few, if any, such applications will be made by landowners as opposed to applicants.

Other key non-monetised costs by 'main affected groups'

There may be familiarisation costs associated with the new processes, however these are likely to be negligible as most changes would simplify existing procedures for practitioners and rights of way user groups . Landowners normally only encounter rights of way issues on a once only basis, consequently they will not be familiar with current processes and so the cost of familiarisation for them would also be negligible.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a		2.0m	**16.7m**
High	n/a	n/a	3.4m	**28.7m**
Best Estimate	n/a		2.8m	**23.4m**

Description and scale of key monetised benefits by 'main affected groups'

The quantified benefits arise from savings to central government and local authorities from the streamlined processes. For example benefits associated with the savings resulting from a reduction in the number of cases going to SofS for appeal and a reduction in the costs of publicising notices.

Other key non-monetised benefits by 'main affected groups'

There are likely to be cost savings to central government and local government from a slimmed down process for which quantification and monetisation is not possible.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

Resource constraints in local authorities could reduce the number of cases considered and so undermine/negate the non-monetised benefits of the stakeholder working group proposals. There is uncertainty around the data on which the estimates are based. The data and assumptions were tested through the consultation and suggest that the capacity of authorities to process applications is declining and may be overstated in this assessment. This option does not come in the scope of OIOO as it is a simplification measure and there will be no impact on business.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: negligible	**Benefits:** negligible	**Net:** negligible	yes	Zero net cost

Evidence Base (for summary sheets)

1. Problem under consideration

This impact assessment is one of three impact assessments relating to a public consultation, which closed on 6 August 2012. The consultation contained proposals for improvements to the policy and legal framework governing public rights of way.

This impact assessment is concerned with simplifying and streamlining the processes for recording and making changes to public rights of way, based on proposals made by Natural England's working group on unrecorded rights of way and applying similar improvements to procedures for extinguishing or diverting rights of way and for creating new ones, in order to make these processes less burdensome and more responsive to local needs.

Two of the Government's key aims are (i) to reduce regulation and (ii) wherever possible to devolve power to a local level. The proposals that are the subject of this impact assessment further both of those aims. The package of proposed reforms is deregulatory, in that it would make procedures more streamlined, and flexible, but it would also give local authorities more scope to use their judgement in dealing with insubstantial or irrelevant applications and objections, and enable the development of locally negotiated solutions. The proposals would also contribute to Defra's aim of promoting engagement with the natural environment by including measures that would safeguard from extinguishment rights of way that are valued by local communities.

The processes for recording public rights of way are complex, slow and resource intensive. This has hampered the recording of all pre1949 rights of way on the definitive map and statement (the local authority's legal record of public rights of way) by the deadline of 2026 set out in the Countryside and Rights of Way (CROW) Act 2000 and 2000 Rural White Paper.

The project aims to make one-off changes to the legal and policy framework.

2. Rationale for intervention

The right of access is a public good provided through common law although Government has a role in determining how the right is regulated. The current system for recording rights of way on the definitive map and statement could be made more efficient, this would allow more rights of way to be recorded (or the same level maintained through current economic climate). Government intervention is required in order to introduce de-regulatory reforms to streamline and simplify the legal and procedural processes.

3. Policy objectives

The policy objective is to introduce de-regulatory reforms to streamline and simplify the legal and procedural processes for making rights of way orders. The intended effect is to reduce the cost of, and other barriers to, recording rights of way on the definitive map and statement. Although a package of measures the policy objectives can therefore be seen as being divided into two parts

- Part 1: simplifying the processes for recording existing rights of way
- Part 2: simplifying the process for creating, extinguishing and diverting public rights of way (collectively known as public path orders (PPOs))

4. Background

England's network of public rights of way is a valuable resource, being both a significant part of our heritage and a major recreational and transport resource. Right of way are the primary means by which people access the countryside and engage in outdoor recreation, which in turn promotes improved

health and well being. Rights of way provide for various forms of sustainable transport and can play a significant part in reducing traffic congestion and harmful emissions. In many areas, rights of way help to boost tourism and contribute to rural economies.

Recording Rights of Way – the definitive map and statement

The 1949 National Parks & Access to the Countryside Act introduced the definitive map and statement of public rights of way. The aim was for local authorities to create a legal record of all public rights of way – excepting those that were part of the 'ordinary roads' network – to ensure that they were not "lost forever".

It was originally envisaged that this would be completed within five years or so. But despite several subsequent attempts to improve the legislative framework, some 50 years later, at the time of the introduction of the Countryside and Rights of Way Act 2000 (CRoW), the definitive map and statement was far from complete.

In an attempt to resolve this, the CROW Act introduced a cut off date, whereby after 25 years (i.e. in 2026) all rights of way already in existence in 1949 and not recorded on the definitive map and statement by 2026 would be extinguished. The intention was that this would: (i) remove uncertainty for landowners, who might otherwise have a 'lost' right of way discovered on their land; (ii) provide an incentive to complete the definitive map and statement before the 2026 deadline.

As part of this package, an undertaking was given, in the Government's 2000 Rural White Paper, to provide an average of £2 million a year to volunteers to find, research and submit applications for all the unrecorded rights of way in existence in 1949, so that they would be recorded by the time of the cut-off date and therefore not be lost. Natural England (then the Countryside Agency) was charged with administering this process.

Having established, through an early study, that there were not enough experienced volunteers in the right geographical locations to make a volunteer-based approach feasible, Natural England commissioned a systematic trawl though national and local archives, in order to generate the evidence to collate and submit the required claims – this was known as the *Discovering Lost Ways* project.

The object of this exercise was to make the process of recording rights of way significantly easier for local authorities by systematically gathering all the evidence needed to make an order to modify the definitive map and statement and presenting it to local authorities in a form that would enable the authority to process it with minimal effort. Although Discovering Lost Ways yielded some useful results, it did not produce packages of evidence that were robust enough to withstand challenge at public inquiry and therefore did not relieve local authorities of the burden of undertaking further investigation before a defensible order could be made. The project would therefore not have made possible the recording of the rights of way that needed to be recorded by the 2026 cut-off date. In addition, it has become clear that there is a particular problem about potential extinguishment of well-known and well-used but unrecorded ways in built up areas, for which there exists little documentary evidence.

It is now apparent that the 2026 cut-off date proposal in the CRoW Act did not take account of the following obstacles.

- The current legislative framework makes the recording of right of way a slow and resource-intensive process
- The establishment and recording of rights of way is an emotive, contentious and increasingly litigious area and a very exacting standard of legal evidence is required to see though a successful application.
- Neither a volunteer-led, nor a centralised, systematic approach to gathering evidence and making applications, has been shown capable of delivering the required number of applications within the required timeframe.
- Under-resourced rights of way sections in Local authorities would not have the capability to process all the applications within a reasonable timeframe under the current system.
- The rights of way most under threat of extinction are not 'lost' rights of way, but unrecorded ways for which exists little documentary evidence.

In summary, it was concluded that the forced completion of the definitive map and statement by 2026 had been shown not to be a practicable proposition and that, if the definitive map and statement was to be completed within a set timescale, a new approach would be needed. It was decided that Natural England should withdraw from active research and work to develop a consensus among stakeholders about the best way forward, through an independently-chaired **Stakeholder Working Group** on unrecorded rights of way. This IA examines the impacts of putting in place the recommendations of the Stakeholder Working Group.

The **Stakeholder Working Group** was set up by Natural England in the autumn of 2008 to work together constructively to look for ways to improve the procedures for recording public rights of way, by taking out as much of the complexity and long-windedness as possible. It was acknowledged from the outset that a perfect solution was unattainable, but that an agreed package of reforms – if one could be devised – would hold out the prospect of delivering significant benefits to all sides.

The Group was independently chaired and contained a balanced representation of the key interests sectors of: land managers/business; rights of way users, and local authority practioners in local authorities. The membership also included representatives from Natural England, Defra and the Countryside Council for Wales.

The terms of reference agreed with the Group state that its purpose is to bring together representatives of the key relevant interests to:

- *consider the issues and difficulties associated with the process of recording of pre-1949 and other public rights of way that are not currently shown on the definitive map and statement maintained by surveying authorities; and,*
- *work together with the aim of reaching consensus on a balanced package of strategic reforms in law and procedure that in the Group's view would bring real benefit to the various interests potentially affected by the claimed existence of such rights.*

Where appropriate the Group could draw attention to and consider other ways of improving access.

The Group, met eleven times between October 2008 and January 2010. The result is the agreed package of recommendations that are the subject of this Impact Assessment. The Group's report and further background can be accessed through the following link.

http://www.naturalengland.org.uk/ourwork/access/rightsofway/unrecorded/default.aspx

Public Path Orders (PPOs)

In addition for processes for recording rights of way, there are also processes in place for governing the creation, extinguishment and diversions of public rights of way, collectively known as 'public path orders' (PPOs). The stakeholder working group's proposed reforms seek to simplify and streamline the processes for recording existing public rights of way and given that these processes are similar to those undertaken as part of PPOs it is a logical extension that these reforms be extended to the PPO process.

5. Description proposed options

Part 1: Implement reforms in the process of recording existing rights of way

Under this option changes would be made to the processes for recording rights of way set out in the Wildlife and Countryside Act 1981. The recommendations of the Natural England Stakeholder Group would be implemented under this option (see annex 3 for full list). The aim of the recommendations is to streamline the process thereby making the process cheaper and quicker for both local and central government. The recommendations include measures such as the introduction of quality threshold test for validating applications, allowing irrelevant objections to be discounted, reducing the cost of publicising orders and only allowing cases to be referred to the Secretary of State once.

Part 2: Implementing reforms in the process for creating, extinguishing and diverting rights of way (Public Path Orders)

The stakeholder working group's proposed reforms seek to simplify and streamline the processes for recording existing public rights of way. Given that these reforms are intended to make the process work more effectively and to bring about efficiency and cost savings a logical extension of this initiative would be to apply comparable reforms to the legal and policy framework governing the creation, extinguishment and diversions of public rights of way, collectively known as 'public path orders' (PPOs). This proposal, to apply changes to PPOs is analysed separately within this IA but then brought together in a total figure at the end.

6. Costs and benefits of each option

Part 1: Implement reforms in the process of recording rights of way

Methodology

There are a number of sectors impacted by these policy proposals specifically

- Central government
- Local government
- Land owners/managers
- Rights of way activists
- General public

Due to the complexity of the system and variations across local authorities it is not possible to quantify all of the impacts of the changes proposed. However as the changes are intended to be a way of streamlining the process, and were agreed by a wide range of stakeholders it can be reasonably assumed that the measures present a net benefit to all those involved.

The costs and benefits for option 1 have been divided into three categories; those which are quantifiable and monestisable, those which may be quantifiable and those which are not quantifiable. These have been divided by sector so that the costs and benefits for each sector can be identified, these tables can be found in annex 4 (a full list of the Stakeholder Working Group recommendations can be found in annex 2). It should be noted that as individual proposals may have an impact on a number of sectors and so one proposal may appear in a number of the tables. The costs and benefits in the annex 4 tables are colour coded, the benefits being green and costs orange.

Assumptions

- The price base year is 2010
- The present value base year is 2012 as this is when the decision on this policy will be made.
- The analysis is conducted over a 10 year period.
- The focus of this IA is streamlining the current process that are in place for recording existing rights of way (part 1) and creating, extinguishing and diverting rights of way (part 2) and the associated local and central government costs. It does not therefore consider any public benefits that may occur due to changes in rights of way.
- The savings data comes from the 'Discovering Lost Ways' report (referenced in annex 5) updated to 2010 prices (see table 1). The data are average figures (from a survey of local authorities) and are seen to be a reasonable basis upon which to estimate overall costs of making Definitive Map Modification Orders (DMMO – which is the process of recording rights of way on the definitive map and statement), which record rights of way on the definitive map. They do, however, hide extremes within individual authorities. The lowest cost of bringing an unopposed DMMO to fruition across all authorities in the survey, for example, was anticipated

to be £661. The highest recorded cost of getting a DMMO onto the map, through a local inquiry, was just over £30,000[1].

- The cost to central government of the Secretary of State role in appeals in 2010 was estimated to be around £3,100,000 per year (total estimated full cost of the Planning Inspectorate rights of way work) which is an estimated £6,200 a case (£3,100,000 divided by 500, number of opposed cases).
- Assumptions made in order to calculate cost savings for each proposal can be found in the final column of the tables in annex 4. The data for these calculations are the information in table 1 and expert option on the impact of the options from the Planning Inspectorate and local authorities. Views on these assumptions were sought as part of the consultation and the responses broadly support our assumptions but suggest that the number of unrecorded ways may be an over estimate but that equally local authorities capacity to deal with them is declining with reductions in public funding. There were some suggestions of costs and impacts that had been overlooked or underestimated but very little hard or consistent data to underpin them.
- It is assumed that the familiarisation costs of the change are negligible. This is because although there are a large number of changes, most of them are relatively minor and straightforward changes to the existing procedures and some of them would simplify existing procedures. Of our more than 300 consultation responses only a handful highlighted familiarisation costs as an issue but did not attempt to quantify them. It is therefore envisaged that, overall, practitioner time to familiarise themselves would not be significant. The process changes will not impact on landowners, except for the ability to take local authorities to court, which is unlikely to be exercised by landowners. Moreover most landowners only encounter rights of way issues on a once only basis, consequently they will not be familiar with current processes and so the cost of familiarisation for them is also negligible. The CLA response to the consultation supported this view.
- The cost of applying to the court for an order is £200 per case. The throughput for cases that under current arrangements are referred to the Secretary of State averages around 15 cases a year and this figure has been used for the number of court orders applied for.
- There are two proposals that, although they are part of the package of reforms and were analysed in the consultation IA, will not require primary legislation to implement and so are not considered in the analysis presented in this IA, they will be dealt with through guidance and policy advice. The two proposals are
    - Proposal 13: Review of cases based on documentary evidence should normally be by means of written representations, but with the discretion to hold a hearing or inquiry if in all the circumstances it is likely to add value. This would lead to a switch from hearings to written representations.
    - Proposal 15: Orders should be published in draft and there should be flexibility for surveying authorities to correct technical errors in them – in the consultation IA this was grouped with Proposal 29: There should be provision for basic factual corrections and clarifications of the definitive map and statement, even after the cut-off, subject to clear guidance and appropriate safeguards, which were assumed to lead to a reduction in cases. As it is not possible to distinguish between the distinct difference between the impact of each proposal on the number of cases – it has been assumed that the number of cases reduced will be the same.
    - In order for ease of comparison between the consultation and final IAs the relevant proposals etc have been deleted but the numbering etc has not changed.

The data (as described in the assumptions above) used in calculating the costs and benefits of the options is shown in table 1.

[1] The reason that some cases can be so costly is that if a case is particularly contentious it may involve a lengthy public inquiry at which the parties may be represented by Queen's Counsel. Some cases are also subject the challenge in the High Court and Court of Appeal.

Table 1: base data used for calculations (letter and numbers are for ease of showing how calculations have been made).

a	Number of cases dealt with each year	1200	
b	Number of cases dealt with by Planning Inspectorate (PINS) each year	500	
c	Total cost to central government of dealing with cases each year	£ 3,100,000	
d (c-b)	Cost to central Government per case	£ 6,200	
f	Newspaper advertising costs	Low	600
		Central	1000
		High	1300
g (a*0.9)	Number of cases after Better Evidence Test in place	1080	

	Stages	England (£'000's) 2010 prices
A	Determining a Schedule 14 application	2900
B	Making and publishing a DMMO	1000
C	Confirming a DMMO (either as unopposed or after the stages below)	800
D	Dealing with objections by written representations	900
E	Dealing with objections through a hearing	2000
F	Dealing with objections through a local inquiry.	4300
G	Average cost of bringing unopposed DMMO	4700
H	Average cost of opposed DMMO dealt with in writing	5700
I	Average cost of opposed DMMO dealt with in a hearing	6700
J	Average cost of opposed DMMO dealt with in a local inquiry	9100

K (I-H)	Difference in cost between dealing with opposed DMMO in writing and through a hearing	1000
L (M-K)/2	Average difference in cost between dealing with opposed DMMO through hearing and inquiry	1200
M (J-H)	Difference in cost between dealing with opposed DMMO in writing and through an inquiry	3400

The underpinning assumption under business as usual is that the 2026 cut off date would be implemented. This would result in all pre 1949 rights of way having to be applied for by this date.

Following the CRoW Act 2000, the Countryside Agency commissioned a scoping survey to establish the costs to local authorities of the current process of recording rights of way on the definitive map and statement and to estimate the number of unrecorded rights of way. The study estimates that there are around 20,000 unrecorded rights of way. This estimate has been discussed and sense checked with stakeholders and is considered a reasonable estimate of the number of applications that may be made before the cut off point.

The impacts of the recommendations of the Natural England Stakeholder Group have been grouped according to sector and ability to quantify and monetise the impacts. The tables in annex 4 set these out as well as a description of the impact.

Proposal 1 of the stakeholder working group is to implement the cut off in 2026. As this would occur under business as usual the impact of this proposal is not examined and so is excluded from the analysis of this option.

Benefits

Annex 4 sets out a description of the benefits of the all the proposals and whether the impacts can be quantified or monetised. Due to the nature of the proposals it is only possible to quantify the impacts of seven of them however descriptions of the benefits are given for all proposals and sectors. For example it is not possible to quantify the benefit to landowners of reduced livestock control concerns from proposal 32 (*It should be possible for an owner to apply to a highway authority for authority to erect new gates on restricted byways and byways open to all traffic in line with existing provisions for their erection on footpaths and bridleways*).

The estimates used for the quantifiable impacts are from experts' opinion (for example the Planning Inspectorate and local authority representatives) and therefore should be seen as estimates only. Further evidence on these assumptions will be sought through the consultation process.

Estimates have been made for the savings that would occur to central and local government from proposals. Table 2 lists the proposals for which quantification and monetisation was possible and table 3 shows the value of the benefits that accrue due to the simplification of the system. The brackets in these table show how the figures have been calculated).

Table 4 shows the present value benefits of the streamlining. The table only shows the proposals for which quantification and monetisation was possible (this is why not all the proposals are listed).

Table 2: Description of quantified benefits to central and local government

	Proposal	Description of saving						
			Central Government			Local government		
			Low	Central	High	Low	Central	High
I	Proposal 3: Surveying authorities should have a new power to reject without substantive consideration applications that do not meet a Basic Evidential Test (BET), on the understanding that they may be resubmitted if more convincing evidence can be found.	Reduction in number of cases going through the application system.	n/a	n/a	n/a	120	120	120
Ii	Proposal 10: The requirement for newspaper advertisements relating to surveying authority notices of all types should be minimised by referring those interested to details online or at the surveying authority's offices.	Saving from no longer having to advertise £'s per case	n/a	n/a	n/a	600	1000	1300
Iii	Proposal 11: The surveying authority should be allowed to discount summarily any irrelevant objections.	Reduction in number of cases being submitted to SofS.	3	3.5	4	3	3.5	4
Iv	Proposal 12: Cases should only ever be referred to the Secretary of State once.	Reduction in number of cases determined by SofS	50	50	50	50	50	50
vii	Proposal 16: Where an order is successfully challenged in the High Court, it is the Secretary of State's decision rather than the surveying authority's order that should be quashed–leaving the original order to be redetermined by the Planning Inspectorate as necessary.	Reduction in cases that have to go through the process	n/a	n/a	n/a	2	2	2
vi	Proposal 29: There should be provision for basic factual corrections and clarifications of the definitive map and statement, even after the cut-off, subject to clear guidance and appropriate safeguards.	Reduction in cases that may have to go to the SofS.	10	15	20	10	15	20

Table 3: Annual monestised benefits to central and local government

Proposal	Value of saving								
	Central Government			Local Government			Total		
	Low	Central	High	Low	Central	High	Low	Central	High
Proposal 3: (i*A)	n/a	n/a	n/a	£348,000	£348,000	£348,000	£348,000	£348,000	£348,000
Proposal 10: (ii*g)	n/a	n/a	n/a	£648,000	£1,080,000	£1,404,000	£648,000	£1,080,000	£1,404,000
Proposal 11: (central govt – iii*d, local government – iii*D)	£18,600	£21,700	£24,800	£2,700	£7,000	£17,200	£21,300	£28,700	£42,000
Proposal 12: (central govt – iv*d, local govt – iv*H)	£310,000	£310,000	£310,000	£285,000	£285,000	£285,000	£595,000	£595,000	£595,000
Proposal 16: (vii*B)	n/a	n/a	n/a	£2,000	£2,000	£2,000	£2,000	£2,000	£2,000
Proposal 29: (central govt – vi*d, local govt – vi*H)	£62,000	£93,000	£124,000	£57,000	£85,500	£114,000	£119,000	£178,500	£238,000
Total	**£390,600**	**£424,700**	**£458,800**	**£1,342,700**	**£1,807,500**	**£2,170,200**	**£1,733,300**	**£2,232,200**	**£2,629,000**

Table 4: Recording Rights of Way present value benefits

		Present value benefits	Annualised Benefits
Benefit to Local Authority	Low	£8,917,546	£1,072,258
	Central	£12,004,517	£1,443,439
	High	£14,413,390	£1,733,086
Benefit to Central Government	Low	£2,594,171	£311,927
	Central	£2,820,646	£339,158
	High	£3,047,122	£366,390
Total Benefit	Low	£11,511,717	£1,384,185
	Central	£14,825,163	£1,782,598
	High	£17,460,511	£2,099,476

Note: annualised benefits are those shown in the coversheet rather than the annual figures in table 3

Costs

The only significant monetisable costs in these measures are the costs to central government of implementing the changes and the cost to magistrates courts of proposals 17 and 18 (*surveying authorities should determine applications and make any consequent definitive map modification order in a reasonable timescale. Where they do not, both applicants and affected owners should be able to seek a court order requiring the authority to resolve the matter*). The implementation of this recommendation would lead to an increased burden on the magistrates' courts as applicants would be able to seek a court order if the local authority failed to resolve the order in a reasonable timescale.

The justice specific impact test was conducted and it established that this measure will result in an additional burden on the court system. The Ministry of Justice have informed us that the cost of an application for a court order is £200 and this covers the full cost of providing the service. The throughput for cases that under current arrangements are referred to the Secretary of State averages around 15 cases a year. It is therefore envisaged there will be 15 cases taken to court each year and the cost of these will be borne by the applicant. The Ministry of Justice concluded that the number of applications would have very little impact on court activity and any related costs would be recovered through the fee. This cost is however a cost to the landowner/applicant but is not a burden as they would only make a court application if there expected benefits from doing so were higher than the costs. It is believed that very few, if any, such applications will be made by landowners as opposed to applicants.

The costs currently quantified for this option are shown in table 5.

Table 5: Recording rights of way costs

	Transition cost	Annualised cost (excluding transition)	Present value cost
Central Government	£37,000	n/a	£37,000
Applicants/landowners	0	£2,396	£19,925
Total	£37,000	£2,396	£56,925

Note: annualised costs are those shown in the coversheet

The net present value of option 1 is positive and is shown in table 6. The net present value is calculated by subtracting the net present costs from the net present benefit.

Table 6: Recording rights of way net present value

		Present value
Local Authority	Low	£8,860,621
	Central	£11,947,592
	High	£14,356,465
Central Government	Low	£2,537,247
	Central	£2,763,722
	High	£2,990,197
Total	Low	£11,454,793
	Central	£14,768,238
	High	£17,403,587

Part 2: Implementing reforms in the process for creating, extinguishing and diverting rights of way (Public Path Orders)

The same methodology and assumptions have been used for the analysis of PPOs as those used for the analysis of the reforms in the recording of existing Public Rights of Way.

The stakeholder working group's proposed reforms seek to simplify and streamline the processes for recording existing public rights of way. Given that these reforms are intended to make the process work more effectively and to bring about efficiency and cost savings a logical extension of this initiative would be to apply comparable reforms to the legal and policy framework governing the creation, extinguishment and diversions of public rights of way, collectively known as 'public path orders' (PPOs).

Among the reforms advocated by the Stakeholder Working Group, measure included in the Bill for application to the PPO regime are as follows

- Proposal 10 – the requirement for newspaper advertisements relating to surveying authority notices of all types should be minimised by referring those interested to details online or at the surveying authorities offices.
- Proposal 11 – the surveying authority should be allowed to discount summarily any irrelevant objections. It should be required to treat both these and representations made in support as registrations of interest in the outcome of the case.
- Proposal 14 – the Secretary of State should be able to split a case such that only aspects that are objected to need to be reviewed.
- Proposal 16 – where an order is successfully challenged in the High Court, it is the Secretary of State's decision rather than the surveying authority's order that should be quashed – leaving the original order to be re-determined by the Planning Inspectorate as necessary.
- Proposal 29: There should be provision for basic factual corrections and clarifications of the definitive map and statement, even after the cut-off, subject to clear guidance and appropriate safeguards.

It is estimated that the number of PPOs is around the same as the number of DMMOs and that the cost of the processes are also similar. Therefore for the proposals outlined above an estimate of the benefits can be calculated using the data and assumptions for the DMMO process. This is shown in table 7. These figures are for illustrative purposes only and no costs have as been calculated as none are associated with the proposals listed above.

The consultation document asked whether the proposals identified should be applied to the policy and legislation governing PPOs and where there are any other reforms that might be applied to the PPO regime to make it more effective/efficient. The consultation also sought views on whether the assumptions and data used for the assessment of impacts on definitive map modification orders also applicable to public path orders and if not what data we should be using.

The consultation responses broadly confirmed our view that applying the streamlining measures to the PPO process would be beneficial and did not indicate that there were other suitable measures for inclusion the we had omitted. The responses also suggested that the Impact Assessment assumptions were broadly correct and that nothing had been missed.

Table 7: Present value benefits resulting from applying proposals 10, 11,14 and 16 to the Public Path Order process

		Present value benefits
Benefit to Local Authority	Low	£4,713,475
	Central	£7,800,445
	High	£10,209,318
Benefit to Central Government	Low	£535,305
	Central	£761,780
	High	£988,256
Total Benefit	Low	£5,248,780
	Central	£8,562,226
	High	£11,197,574

The total net present value for all measures in the Bill are therefore the combination of table 7 (the present value benefits resulting from applying proposals to PPOs) and table 6 (the net present value of the changes to the process for implementing the reforms to the recording of rights of way. The total values are shown in table 8, 9 and 10.

Table 8: Total benefit of measures in the Bill (Part 1 + Part 2)

		Rights of Way - net present benefit	PPO - net	Sum of net present benefits	Annualised benefits
Local Authority	Low	8,917,546	4,713,475	13,631,021	£1,639,013
	Central	12,004,517	7,800,445	19,804,962	£2,381,376
	High	14,413,390	10,209,318	24,622,708	£2,960,668
Central Government	Low	2,594,171	535,305	3,129,476	£376,292
	Central	2,820,646	761,780	3,582,427	£430,756
	High	3,047,122	988,256	4,035,377	£485,219
Total	Low	11,511,717	5,248,780	16,760,497	£2,015,305
	Central	14,825,163	8,562,226	23,387,388	£2,812,132
	High	17,460,511	11,197,574	28,658,085	£3,445,887

Table 9: Total cost of measures in the Bill (same as table 5) (Part 1 + Part 2)

	Transition cost	Annualised cost (excluding transition)	Present value cost
Central Government	£37,000	n/a	£37,000
Applicants/landowners	0	£2,396	£19,925
Total	£37,000	£2,396	£56,925

Note: annualised costs are those shown in the coversheet

Table 10: Net Present Value of measures in the Bill (Part 1 + Part 2)

		Net Present Value
Local Authority	Low	13,574,096
	Central	19,748,037
	High	24,565,783
Central Government	Low	3,072,552
	Central	3,525,502
	High	3,978,453
Total	Low	16,703,572
	Central	23,330,464
	High	28,601,161

7. Wider Impact

See annex 3 for specific impact tests

8. Risks

The following are identified risks to the cost benefit analysis

- Cuts in spending on rights of way in local authorities finance as a result of the spending review could undermine or negate the non-monetised benefits if the stakeholder working group.
- The majority of data used has come from studies with estimates and expert views and therefore all data should be treated with caution.

9. Direct costs and benefits to business calculations

Although this measure falls under OITO, the total net cost is estimated to be zero. This is because the main objective of this policy is a simplification measure which will result in savings to local authorities and central government.

The net cost is estimated to be zero as

- The implementation of recommendations 17 and 18 (*Surveying authorities should determine applications and make any consequent definitive map modification order in a reasonable timescale. Where they do not, both applicants and affected owners should be able to seek a court order requiring the authority to resolve the matter and the court should allow surveying authorities a reasonable amount of time to do their job taking account of the local circumstances and the authority's current efforts*) will mean that although there will be a cost to landowners or applicants when they seek a court order, this will be voluntary and therefore not a burden. It can also be assumed that the landowner/applicant would only apply to the court if their expected benefit was greater than the fee charged.

- There may be familiarisation costs associated with the new processes, however these are likely to be negligible as most changes would simplify existing procedures for practitioners and rights of

way user groups . Landowners normally only encounter rights of way issues on a once only basis, consequently they will not be familiar with current processes and so the cost of familiarisation for them would also be negligible.

10. Summary and preferred option with description of implementation plan

The preferred option is for a package of measures primarily aimed at streamlining and simplifying the order-making processes relating to the recording of public rights of way as provided for in the Wildlife and Countryside Act 1981.

This is preferred option for the following reasons

- It would streamline the procedures for adding rights of way to the legal record and therefore make it easier and quicker to do so.
- The proposed measures would give local authorities more scope for resolving disputed cases at a local level and would give them more control over the process.
- The package of measures has widespread support from stakeholders
- On the evidence available so far, there would be financial savings to local and central government and to volunteers seeking to add rights of way to the legal record.
- It would facilitate implementation of the 2026 cut-off date introduced by the Countryside and Rights of Way Act 2000 which would, in turn, remove uncertainty for landowners, who might otherwise have had a 'lost' right of way discovered on their land.

Implementing the proposals will require a mix of guidance, regulations and primary legislation. Of the 32 Stakeholder Working Group proposals 17 would require primary legislation and are the subject of this Impact Assessment. The other proposal would require regulations under existing primary legislation and through guidance and other non-legislative means.

Annex 1: Post Implementation review

Basis of the review: The stakeholder panel will review progress in 2016 (in line with proposal 21 but later than the 2014 stated as the proposals will not come into force until 2014).

Review objective: to review the progress of recording rights of way.

Review approach and rationale: at this stage the exact nature of the review is yet to be determined.

Baseline: The information used in the final version of the IA will be used as a baseline.

Success criteria: not yet determined.

Monitoring information arrangement: the consultation is seeking views on monitoring arrangements.

Reasons for not planning a review: not applicable**.**

Annex 2: Natural England Stakeholder Group recommendations

These are the proposals that the Natural England Stakeholder working group established. They are grouped into similar proposals and therefore the proposal numbers are not in sequence. Those highlighted in green require primary legislation and are the subject of this Impact assessment

Proposal
Proposal 1: Implementation of the cut off is an integral part of the agreement reached by the Group. The statutory provisions for pre1949 rights of way to be extinguished if unrecorded at the cut off should be brought into force, with effective protection for useful or potentially useful rights of this kind given in accordance with the Group's other proposals.
Proposal 25: Routes identified on the list of streets/local street gazetteer as publicly maintainable, or as private streets carrying public rights, should be exempted from the cut off.
Proposal 24: Provision should be made for rights covered by registered applications to be saved from the effect of the cut off until the case is substantively determined. There needs to be an appropriate post cut off period to enable registration of recent applications if they pass the Basic Evidential Test.
Proposal 27: Surveying authorities have an important existing role in securing the recording of useful or potentially useful routes if there is convincing evidence of pre1949 rights of way along them. Defra should consider and consult on whether during the brief post cut off period we have recommended for registration of recent applications, authorities should remain able to register such rights by self application, subject to the same tests and transparency as for any other application.
Proposal 20: It should not be possible after the cut off date for recorded rights of way to be downgraded or deleted based on pre 1949 evidence, just as there will be no scope for them to be upgraded or added because of such evidence.
Proposal 26: It should not be possible to defeat after the cut off an application based on evidence of long public use merely by showing that any of that use took place along a pre 1949 right of way that still existed at the time of the cut off. Neither should it be possible to use pre1949 documentary evidence after the cut off to claim that the status of the route is higher than that for which there is recent user evidence.
Proposal 3: Surveying authorities should have a new power to reject without substantive consideration applications that do not meet a Basic Evidential Test, on the understanding that they may be resubmitted if more convincing evidence can be found.
Proposal 7: It should not be possible for objections to block an agreement between the surveying authority and the landowner about the recording of rights, although the surveying authority should be required to have due regard to representations about the proposed agreement or the status of the route.
Proposal 9: Where objections to the surveying authority's determination are made on the basis of new evidence, an award of costs against the objector should be considered if it is clear that the evidence has been wilfully withheld. This should be possible regardless of the outcome of the case.
Proposal 11: The surveying authority should be allowed to discount summarily any irrelevant objections. It should be required to treat both these and representations made in support as registrations of interest in the outcome of the case.
Proposal 5: It should be the surveying authority and not the applicant that approaches landowners – and then only if the application passes the Basic Evidential Test. The authority should informally explain at an early stage the process and how the case will be dealt with.
Proposal 6: A surveying authority should be able to make an agreement with one or more affected landowners recognising the existence of a previously unrecorded pre-1949 right of way, but allowing it to be recorded with appropriate modifications on the definitive map and statement, where justified to avoid significant conflicts with current land use. This power should be subject to the public interest protections mentioned later in this report.
Proposal 8: Natural England should be added to the list of prescribed bodies consulted when a definitive map modification order is being considered.
Proposal 32: It should be possible for an owner to apply to a highway authority for authority to erect new gates on restricted byways and byways open to all traffic in line with existing provisions for their erection on footpaths and bridleways.
Proposal 4: Applicants should not need to provide copies of documents that are held by the surveying authority or are readily available in a public archive.
Proposal 10: The requirement for newspaper advertisements relating to surveying authority notices of all types should be minimised by referring those interested to details online or at the surveying authority's offices.
Proposal 12: Cases should only ever be referred to the Secretary of State once.
Proposal 16: Where an order is successfully challenged in the High Court, it is the Secretary of State's decision rather than the surveying authority's order that should be quashed – leaving the original order to be re-determined by the Planning Inspectorate as necessary.
Proposal 13: Review of cases based on documentary evidence should normally be by means of written representations, but with the discretion to hold a hearing or inquiry if in all the circumstances it is likely to add value.

Proposal
Proposal 14: The Secretary of State should be able to split a case such that only aspects that are objected to need be reviewed.
Proposal 15: Orders should be published in draft and there should be flexibility for surveying authorities to correct technical errors in them.
Proposal 19: It should be possible to transfer ownership of an application for a definitive map modification order.
Proposal 29: There should be provision for basic factual corrections and clarifications of the definitive map and statement, even after the cut-off, subject to clear guidance and appropriate safeguards.
Proposal 17: Surveying authorities should determine applications and make any consequent definitive map modification order in a reasonable timescale. Where they do not, both applicants and affected owners should be able to seek a court order requiring the authority to resolve the matter.
Proposal 18: The court should allow surveying authorities a reasonable amount of time to do their job taking account of the local circumstances and the authority's current efforts.
Proposal 21: A stakeholder review panel should be constituted after implementation of the Group's proposals to review progress with recording or protecting useful or potentially useful pre-1949 rights of way before the cut-off. The panel should make an initial report in 2015.
Proposal 2: A single source of clear and authoritative guidance, relevant to all parties involved in the process, will be needed.
Proposal 30: Defra and DfT should jointly work with stakeholders to review the possible long-term benefits of greater integration of the management and administration of the highways network.

At present the scope of the following proposals is still under consideration and therefore they are not factored in to this Impact Assessment. Once their scope is determined the final IA will consider the impact.

Proposal	Reason the scope is still under consideration
Proposal 28: Consideration should be given to the data management systems needed to support administration of the definitive map and statement.	At present it is not clear what would be needed under this proposal and therefore the consultation asks for evidence on what would be required with the assumption that it would be developed by practitioners with central government support. Following the consultation should this proposal be accepted the impacts would be included in the final IA.
Proposal 31: A review should be carried out of how routes for cyclists could best fit in with the highways network to form an integrated whole, and provide for usage by all non-motorised users.	Discussions are ongoing as to how, within current spending restraints and priorities, this should be pursued. When this is resolved, the impact will be included in the final IA.
Proposal 23: Regulations should be made to ensure close monitoring of surveying authority performance in preparing for the cut off.	The consultation suggests it would be inappropriate to effect monitoring by regulation at a time when local authority resources are particularly stretched and contrary to the current Government policy of removing central reporting requirements.
Proposal 22: A baseline survey of backlogs and cases already in the 'pipeline' will be needed so that progress can be assessed against it.	At present it is not clear whether or how this proposal will be implemented. The consultation document suggests that we should first look at what ways there are of getting evidence and encouraging local authorities and other stakeholders to participate in reporting on progress. It therefore poses the question: 'what is the most effective way of gathering evidence of progress within local authorities towards preparing for the cut-off date?' The results of the consultation in this area will feed into the final IA.

Annex 3 – Specific Impact Tests

Equalities Analysis

The changes examined in the IA affects the processes for recording rights of way and so there will be no impacts of the options on specific groups. Any changes would affect all equally and therefore at this stage no equalities assessment is needed, however this will be considered again should this work be taken further and more detailed work be undertaken.

Competition Impact Test

1. Directly limit the number or range of suppliers? No.
2. Indirectly limit the number or range of suppliers? No.
3. Limit the ability of suppliers to compete? No.
4. Reduce suppliers' incentives to compete vigorously? No.

Small Firms Impact Test

Does the proposal affect small business, their customers or competitors? No – this proposal does not impose additional burdens on businesses or land owners.

Greenhouse Gas Impact Test

This policy will have no impact on GHGs.

Wider environmental Impacts Test

This policy is changing the processes for recording existing rights of way and therefore there would be no change in environmental impacts.

Health and Wellbeing Impact Test

1. Will your policy have a significant impact on human health by virtue of its effects on the following wider determinants of health? No

Income
Crime
Environment
Transport
Housing
Education
Employment
Agriculture
Social cohesion

2. Will there be a significant impact on any of the following lifestyle related variables? No

Physical activity
Diet
Smoking, drugs, or alcohol use
Sexual behaviour
Accidents and stress at home or work

Consider risk factors that influence the probability of an individual becoming more or less healthy.

3. Is there likely to be a significant demand on any of the following health and social care services? No

Primary care
Community services
Hospital care
Need for medicines
Accident or emergency attendances
Social services
Health protection and preparedness response

Consider the likely contacts with health and social service provision.

If the answer to two or more of these questions is YES you will need to carry out a full health impact assessment.

A health impact assessment is not needed for this IA.

Human Rights
Will the policy decision engage anyone's convention rights?

The identification and recording of public rights of way will for many landowners affect the right of peaceful enjoyment of their property. Although these proposals make it more likely that existing rights of way will be indentified and recorded, they should also make it easier for landowners to mitigate the effects of existing but as yet unrecorded rights of way.

Justice System

Below is the completed checklist for screening impact on the justice system

Does the policy involve:

- creating or amending a criminal offence - no
- creating a new civil sanction or fixed penalty - no
- creating a civil order or injunction breach of which may lead to further proceedings or criminal sanctions - no
- new, or amendments to, sentencing/penalty guidelines - no
- new, or amendments to, court or tribunal procedure rules - no

Or is the policy likely to:

- result in, create or increase applications to the courts or tribunals, including judicial review – yes (detail on page 15).
- establish a new tribunal jurisdiction - no
- require an appeals mechanism - no
- require enforcement mechanisms for civil debts, civil sanctions or criminal penalties - no
- result in an increase in the number of offenders being committed to custody or probation - no
- result in an increase in the length of custodial sentences - no

Rural Proofing
This policy is changing the processes for recording Rights of Way rather than the outcomes of the process and therefore there are no rural impacts.

Sustainable Development
This policy is changing the processes for designating Rights of Way and therefore there are no impacts on outcomes and so no sustainable development impacts.

Annex 4: costs and benefits to different sectors of implementing reforms in the process of recording rights of way

Orange = cost
Green = benefit

Table 1a: Central government impacts

	Proposal	Benefit/cost
Quantifiable and monestisable	Proposal 11: The surveying authority should be allowed to discount summarily any irrelevant objections.	Local authorities would not have to submit cases with irrelevant objections to the Secretary of State. This would be a benefit to government as they would not need to resource these cases. However most orders where there are irrelevant objections also have valid objections and objectors also can modify their objection so it becomes valid. Therefore number of orders estimated by PINS which end up with only irrelevant objections will be 3-4 pa.
	Proposal 12: Cases should only ever be referred to the Secretary of State once.	This would reduce the cases that the Secretary of State has to determine by roughly 50 cases a year. The saving is calculated by multiplying this by the cost per case to Secretary of State.
	Proposals 17 & 18: Surveying authorities should determine applications and make any consequent definitive map modification order in a reasonable timescale. Where they do not, both applicants and affected owners should be able to seek a court order requiring the authority to resolve the matter.	This would remove the need for the Secretary of State to determine these cases. But would shift the burden to the Courts. [*experience with a similar process introduced by the CROW Acts suggests there would be few cases as this is an effective deterrent*] The cost of this is yet to be estimated.
Quantifiable (inc examples) but not monestisable	Proposals 6 & 7: A surveying authority should be able to make an agreement – without it being blocked by objections – with one or more affected landowners recognising the existence of a previously unrecorded pre-1949 right of way, but allowing it to be recorded with appropriate modifications on the definitive map and statement, where justified to avoid significant conflicts with current land use.	Would give local authority more power and scope to resolve contentious, lengthy and costly cases and avoid some cases being submitted to the Secretary of State.
	Proposal 5: It should be the surveying authority and not the applicant that approaches landowners – and then only if the application passes the Basic Evidential Test. The authority should informally explain at an early stage the process and how the case will be dealt with.	Could ultimately be less cases submitted to the Secretary of State, because landowners may be less likely to object to orders
	Proposal 14: The Secretary of State should be able to split a case such that only aspects that are objected to need be reviewed.	Would save costs because only the elements objected to would have to be determined by the Secretary of State.
Not quantifiable	Proposal 29: There should be provision for basic factual corrections and clarifications of the definitive map and statement, even after the cut-off, subject to clear guidance and appropriate safeguards.	Local authorities would be able to make corrections without having to make orders that might be objected to and submitted to the Secretary of State, there would be a resource saving from this. It is not possible to quantify this saving.

Table 1b: Local government impacts

	Proposal	Benefit /cost
Quantifiable and monestisable	Proposal 3: Surveying authorities should have a new power to reject without substantive consideration applications that do not meet a Basic Evidential Test (BET), on the understanding that they may be resubmitted if more convincing evidence can be found.	Local authorities would incur a resource saving due to not having to waste time on irrelevant applications. The number of claims not meeting BET will vary between authorities depending on the experience of applicants, so 90% may meet a BET test. It is therefore assumed that there will be a reduction in cases dealt with by the authority of 10%. This has no effect on the number of cases sent to the Secretary of State as it is assumed that these cases would be rejected. The cost

	Proposal	Benefit /cost
		saving is therefore the cost of determining a schedule 14 application multiplied by 120 (i.e. 10% of cases) = £348k. It may also improve the general quality of applications.
	Proposal 10: The requirement for newspaper advertisements relating to surveying authority notices of all types should be minimised by referring those interested to details online or at the surveying authority's offices.	This would save local authority advertising costs. Average cost for an advert is put at £1284 (made and confirmed) but deals can be done and rates vary across the country so an average figure may be less than £1284. For example a 'deal' can knock third off the cost, the North of the country is cheaper as low as £600. Therefore estimates have been made of £600, £1000 and £1300 as to potential costs saved. This saving is applied to the 1080 cases per year that would occur after the implication of the BET.
	Proposal 11: The surveying authority should be allowed to discount summarily any irrelevant objections.	Local authorities would not have to submit cases with irrelevant objections to the Secretary of State – resource savings. This is estimated to be 3-4 cases per year. The saving is estimated using the cost per case of dealing with objection through writing (low estimate), hearing (central estimate) and inquiry (high estimate).
	Proposal 12: Cases should only ever be referred to the Secretary of State once.	This would reduce the cases that the Secretary of State has to determine by roughly 50 cases a year and save local authorities processing costs. The cost saving is calculated by multiplying the average cost of opposed DMMO dealt with in writing to LAs by 50.
	Proposal 16: Where an order is successfully challenged in the High Court, it is the Secretary of State's decision rather than the surveying authority's order that should be quashed – leaving the original order to be re-determined by the Planning Inspectorate as necessary.	Local authorities would have to remake fewer orders from scratch resulting in a resource saving – 2 per year. The saving from this is calculated by multiplying the number of cases by the cost of making and publishing a DMMO.
	Proposal 29: There should be provision for basic factual corrections and clarifications of the definitive map and statement, even after the cut-off, subject to clear guidance and appropriate safeguards.	Local authorities would be able to make corrections without having to make orders that might be objected to and submitted to the Secretary of State – the resource saving from this and proposal 15 is estimated to be around 10-20%.
Quantifiable (inc examples) but not monestisable	Proposal 5: It should be the surveying authority and not the applicant that approaches landowners – and then only if the application passes the Basic Evidential Test. The authority should informally explain at an early stage the process and how the case will be dealt with.	Although there is more work for the local authority from the approach it is estimated that this may ultimately be less work for the local authority, because landowners may be less likely to object to orders.
	Proposals 6 & 7: A surveying authority should be able to make an agreement – without it being blocked by objections – with one or more affected landowners recognising the existence of a previously unrecorded pre-1949 right of way, but allowing it to be recorded with appropriate modifications on the definitive map and statement, where justified to avoid significant conflicts with current land use.	This would give local authorities more power and scope to resolve contentious, lengthy and costly cases
	Proposal 14: The Secretary of State should be able to split a case such that only aspects that are objected to need be reviewed.	Only the elements objected to would have to be determined by the Secretary of State, therefore local authorities would benefit from being able to record routes more quickly
	Proposal 27: Surveying authorities should be able to register rights by self-application, subject to the same tests and transparency as for any other application.	This would give local authorities power to preserve some rights of way that the local authority feel should be preserved for the public benefit and that might otherwise be lost. At present cases instigated by a local authority cannot be added to the register of applications and therefore there is no mechanism to enable the rights involved in such cases to be preserved by transitional arrangements.
Not quantifiable	Proposal 32: It should be possible for an owner to apply to a highway authority for authority to erect new gates on restricted byways and byways open to all traffic in line with	This may deter some objections to rights of way orders by land owners thus reducing resource costs.

	Proposal	Benefit /cost
	existing provisions for their erection on footpaths and bridleways.	

Table 1c: Land owners/managers

	Proposal	Benefit /cost
Quantifiable (inc examples) but not monestisable	Proposal 17: Surveying authorities should determine applications and make any consequent definitive map modification order in a reasonable timescale. Where they do not, both applicants and affected owners should be able to seek a court order requiring the authority to resolve the matter.	Should encourage Local authorities to deal with applications more promptly giving greater certainty to the land owners/managers. It is anticipated that there will be 15 cases per year and the cost to the landowner is £200 per case.
Not quantifiable	Proposal 5: It should be the surveying authority and not the applicant that approaches landowners – and then only if the application passes the Basic Evidential Test. The authority should informally explain at an early stage the process and how the case will be dealt with.	Likely to result in less anxiety for landowners and less cost as it may avoid the land owners/managers making objections that prove to be unnecessary.
	Proposals 6 & 7: A surveying authority should be able to make an agreement – without it being blocked by objections – with one or more affected landowners recognising the existence of a previously unrecorded pre-1949 right of way, but allowing it to be recorded with appropriate modifications on the definitive map and statement, where justified to avoid significant conflicts with current land use.	Would make it easier for landowners to come to a mutually agreeable solution, at less cost and anxiety.
	Proposal 11: The surveying authority should be allowed to discount summarily any irrelevant objections.	Would enable certain cases to be decided more quickly and cheaply, and therefore save land owners/managers time and costs in preparing and presenting their case against the objection, or paying professionals to do so.
	Proposal 32: It should be possible for an owner to apply to a highway authority for authority to erect new gates on restricted byways and byways open to all traffic in line with existing provisions for their erection on footpaths and bridleways.	Would resolve livestock control concerns.

Table 1d: Right of way activist's impacts

	Proposal	Benefit /cost
Quantifiable (inc examples) but not monestisable	Proposal 4: Applicants should not need to provide copies of documents that are held by the surveying authority or are readily available in a public archive.	May make it less costly to make applications and may incentivise members of the public to make applications. The actual cost saving is likely to be negligible, the inconvenience saving is thought to be greater.
	Proposal 17: Surveying authorities should determine applications and make any consequent definitive map modification order in a reasonable timescale. Where they do not, both applicants and affected owners should be able to seek a court order requiring the authority to resolve the matter.	Should encourage Local authorities to deal with applications more promptly, saving activists' resource.
Not quantifiable	Proposal 5: It should be the surveying authority and not the applicant that approaches landowners – and then only if the application passes the Basic Evidential Test. The authority should informally explain at an early stage the process and how the case will be dealt with.	May enable applications to be resolved more quickly which benefits activists as the right of way will come into use earlier.
	Proposal 11: The surveying authority should be allowed to discount summarily any irrelevant objections.	Would enable certain cases to be decided more quickly and cheaply i.e. the case is resolved before additional costs are incurred.
	Proposal 19: It should be possible to transfer ownership of an application for a definitive map modification order.	Would reduce the number of applications that fail because the applicant is unable to pursue the application.
	Proposal 26: Evidence of recent long public use should enable a historic route to be preserved, but only for that level of recent use.	It would still be possible to apply for historic rights of way on the basis of recent user evidence

Table 1c: Public impacts

	Proposal	Benefit /cost
Not quantifiable	Proposal 5: It should be the surveying authority and not the applicant that approaches landowners – and then only if the application passes the Basic Evidential Test. The authority should informally explain at an early stage the process and how the case will be dealt with.	May enable new routes to become available more quickly.
	Proposal 20: It should not be possible after the cut-off date for recorded rights of way to be downgraded or deleted based on pre-1949 evidence, just as there will be no scope for them to be upgraded or added because of such evidence.	The status of historic routes would be safeguarded.
	Proposal 24: Provision should be made for rights covered by registered applications to be saved from the effect of the cut-off until the case is substantively determined. There needs to be an appropriate post cut-off period to enable registration of recent applications if they pass the Basic Evidential Test.	Certain public rights of way would be preserved at the cut-off date and not lost for public use.
	Proposal 27: Surveying authorities should be able to register rights by self-application, subject to the same tests and transparency as for any other application.	Certain public rights of way would be preserved at the cut-off date and not lost for public use.

Annex 5: References

No.	Legislation or publication
1	Natural England (March 2010), Stepping Forward, The Stakeholder Working Group on Unrecorded Public Rights of Way: Report to Natural England, http://naturalengland.etraderstores.com/NaturalEnglandShop/NECR035
2	Defra (May 2007) Public Rights of Way: Consultation on implications of the right to apply for orders to extinguish and divert public rights of way, and associated rights of appeal. (including RIA)
3	Natural Environment and Rural Communities Act 2006
4	Countryside and Community Research Unit (2002) Discovering Lost Ways, University of Gloucestershire
5	Regulatory Impact Assessment for Part 2 of the Countryside and Rights of Way Act 2000
6	Countryside and Rights of Way Act 2000
7	Wildlife and Countryside Act 1981
8	Highways Act 1980
9	Countryside Act 1968
10	National Parks & Access to the Countryside Act 1949