



The Motoring Organisations' Land Access & Recreation Association

## The Status of Unsealed Unclassified Roads Letters from Government Departments

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## Introduction

'Are all unsealed unclassified roads open to the public with motors?' That question has been asked and argued over for decades. The answer seems to be that the great majority are, but a few can be shown to be bridleways or (more rarely) footpaths.

The issue is discussed at length in the LARA report, *Unsealed Unclassified Roads. Their History, Status, and the Effect of the Natural Environment & Rural Communities Act 2006*, and particularly in the section, '*Ascertaining the status of unclassified roads: evidence and presumptions*'.

This paper is a collection of letters from government departments, 1983 onwards, stating the government's view at the time of each letter.

**From:** Waterman, Dave (Defra) Dave.Waterman@defra.gsi.gov.uk  
**Subject:** RE: rights over UCRs  
**Date:** 11 July 2018 at 09:14  
**To:** alan kind laragb@me.com  
**Cc:** CEO ceo@glass-uk.org, Langford, Pippa (NE) Pippa.Langford@naturalengland.org.uk, Reed, Emma (DEFRA) Emma.Reed@defra.gsi.gov.uk, Luscombe, Michelle (DEFRA) Michelle.Luscombe@defra.gsi.gov.uk



Hi Alan,

Duncan Green asked if, before my formal departure from Defra, I could summarise Defra's position on rights over UCRs. Following our earlier correspondence, I am resending this email with a few corrections.

The relatively recent developments can be summarised as follows.

Background - there are multiple rights over UCRs but many are not shown on the DMS.

2000 - Under the legislation in the CROW Act, rights of way not shown on the definitive map a statement would be extinguished if not recorded by the 2026 cut-off date, even if shown on the list of streets.

2006 - Defra letter advises local authorities to record rights over UCRs on the DMS to prevent them being extinguished by the cut-off.

2010 - SWG recommends, in its report 'Stepping Forward', that all rights over route shown on the list of streets should be protected in order to prevent those rights being lost at the cut-off.

2012 - In the consultation document on rights of way reforms, Defra makes clear that it accepts the SWG recommendation and proposes to implement it. This will at least prevent the rights over UCRs being lost.

Defra's policy on UCRs is that we cannot make blanket assumptions about rights over unclassified roads because there are some cases where the rights are not clear. Should it be necessary, each road would have to be assessed on the evidence. Where any dispute about status occurs, the local authority should endeavour to ascertain what rights exist over that road, and make sure that it is properly recorded on the appropriate records, i.e. the Local Street Gazetteer, list of streets, and/or the DMS. This is not to suggest that all unclassified roads would all need to go through the DMMO process. There is no duty on local authorities to proactively screen and research the status of every unclassified road, but they are obliged to modify the DMS where this is requisite upon the 'discovery of evidence' in any case.

Some unclassified roads would qualify to be recorded on the DMS as BOATs (until section 54A of the 1981 Act prevents them being recorded as BOATs at the cut-off date), and some as bridleways. Others would not qualify for being recording on the DMS, and these would continue to be dealt with in the same way as other highways that are part of the 'ordinary roads' network.

Regards,

Dave Waterman | Rights of Way Reforms Project | Land Use | Natural Environment Policy |  
**Department for Environment, Food and Rural Affairs**

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Duncan Green  
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11 June 2012

Dear Duncan

Thank you for your letter of 25 May about clarification of vehicular rights over UCRs shown on the list of streets, but not on the definitive map and statement.

I can confirm that the Government's advice on this matter has not changed since 1998 and remains as set out in Susan Carter's letter of 24 August and Martin Steer's letter of 30 September 1998. However, I disagree with the way the 1998 DETR letters have been interpreted in your letter.

What Susan Carter's letter says is that UCRs shown on the list of streets may provide evidence of vehicular rights. Martin Steer's letter goes on to say that if a UCR is shown on the list of streets as an all purpose carriageway then that would seem to be a clear indication that vehicular right exist. Neither letter says that: "UCRs can be presumed to be vehicular unless evidence to the contrary exists".

As the 1998 letters point out, Defra cannot give an authoritative interpretation of the law, as only the courts can do that. But if highway authorities are telling users that the vehicular rights on UCRs cannot be presumed to exist, then that is not out of kilter with Defra's advice.

We are prepared to accept that the vast majority of unsealed rural routes shown in the list of streets held by most highway authorities are likely to be shown to be carriageways on investigation. However, even if we are right about that, such a likelihood cannot give rise to a presumption in any particular case, for that would impose an expectation of vehicular rights, and a special and unreasonable burden on those seeking to rebut the presumption, in any case where the route were not, in actual fact, a carriageway.

Both the 1998 letters state that that the only way to resolve the question of what rights exist over a UCR is for the highway authority to determine them on a case-by-case basis, taking into account all the relevant evidence and not just whether they are recorded on the list of streets. That remains our position.

I agree that the fact that section 67(2)(b) of the NERC Act specifically excludes ways shown only on the list of streets from the extinguishment of vehicular rights does not change the Government's advice, as set out in the 1998 letters.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Waterman', with a stylized, cursive script.

DAVE WATERMAN

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Sent by e-mail

Date 28 November 2006

**To all local authorities in England.**

### **The List of Streets and unrecorded rights of way**

The Countryside & Rights of Way Act 2000, sections 53 to 56 2026 (cut-off date for extinguishment of unrecorded rights of way) and the Highways Act 1980, section 36(6) (the 'list of streets')

In the Countryside and Rights of Way Act 2000 the Government fulfilled its commitment in Chapter 11 of the 2000 Rural White Paper, which announced that Government would: "*set a deadline of 25 years for registering forgotten historic footpaths and bridleways on the local definitive maps of the rights of way network*". Section 53 of the Countryside and Rights of Way Act provides that on 1st January 2026 all historic rights of way that have not been recorded on the definitive map and statement will be extinguished.

It has been brought to our attention that some local authorities believe that there is no need to record a public right of way on the definitive map and statement where that right of way is also shown on the list required to be kept under section 36(6) of the Highways Act 1980, the so-called 'list of streets'.

However, the list of streets is a local highway authority's record of all highways that are maintainable at public expense; it is not a record of what legal rights exist over that highway. And there is no exemption, under sections 53 or 54 of the Countryside and Rights of Way Act 2000, from the extinguishment of unrecorded rights over a way on the basis that it is shown on the list of streets.

Consequently, any route that on 1 January 2026 is shown on the list of streets but not on the definitive map will have any unrecorded rights extinguished, subject to the terms of the Countryside & Rights of Way Act 2000.

Local authorities are therefore urged to ensure that any unrecorded footpath, bridleway and restricted byway rights are recorded on the definitive map and statement by the cut-off date of 2026, regardless of whether they are also shown on the list required to be kept under section 36(6) of the Highways Act 1980, the 'list of streets'.

Yours faithfully

Dave Waterman  
Head of Rights of Way Branch



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CYD2/1902/40  
30 September 1998

Dear Mr Lewis

### UNCLASSIFIED COUNTY ROADS

Thank you for your letters of 15 and 29 September about the Department's recent advice on unclassified county roads (UCRs).

Our letter does no more than advise highway authorities and others with an interest in public rights of way (as defined in Part III of the Wildlife and Countryside Act 1981) that where a question of the rights which exist over a UCR is raised, that would need to be decided on a case-by-case basis. This would be of interest to any authority either determining an application for a definitive map modification order under section 53 of the Wildlife and Countryside Act, or reclassifying a road used as a public path under section 54, where the way in question was (or is) also known as a UCR. The letter was not intended to indicate that authorities should now regard any way known as a UCR as not carrying vehicular rights nor was it intended as a prompt to authorities to consider adding UCRs to, or removing them from, their definitive maps or the lists of streets.

Where a route once was, or is currently known by the term "unclassified county road", but is recorded by a highway authority on road maps or the list of streets as an all-purpose carriageway, then that would seem to be a clear indication that vehicular rights exist over it. As I said quite clearly in my letter of 15 September, where a UCR carries vehicular rights those rights remain, unless they have been extinguished by due process of law. The rights may be lawfully exercised and it follows that anyone interfering with the exercise of those rights - including a local authority - may themselves be committing an offence.

I will respond separately to your letter of 18 September to Susan Carter.

Yours sincerely

MARTIN STEER

25 AUG 1998

24 AUGUST 1998

Dear Chief Executive,

### UNCLASSIFIED COUNTY ROADS

1. This letter is to advise you of the conclusions reached by Department of the Environment, Transport and the Regions on the interpretation of the term "unclassified county road" (UCR). This advice replaces previous advice, usually given in response to specific enquiries rather than a general statement, which was withdrawn in March 1998.

2. We have reached the following conclusions (with the usual proviso that the Secretary of State cannot give an authoritative interpretation of the law as only the Courts can do that) :

i) The Highways Act 1980 places a duty on highway authorities to maintain highways, which includes footpaths, bridleways and carriageways. Highway authorities have a further duty under section 36(6) of the Highways Act 1980 (and earlier Highways Acts) to prepare a list of highways maintained at public expense.

ii) The Local Government Act 1929 made provision for "unclassified roads", "classified county roads" and "county roads". The term "unclassified road" was made redundant by the Local Government Act 1972. Some routes may, however, be described as unclassified county roads (UCRs) on certain documents, including the list of highways maintained at public expense.

iii) In relation to an application under the Wildlife and Countryside Act 1981 to add a route to a definitive map of rights of way, the inclusion of a highway described as a UCR on the Highways Act list of highways maintained at public expense may provide

evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights.

iv) It would, therefore, be possible for a way described as a UCR on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way, provided the route fulfils the criteria set out in Part III of the Wildlife and Countryside Act.

3. Against this background, we have concluded that we cannot offer any guidance which is applicable in all cases on the rights that exist over routes known as UCRs. Any questions about the status of such routes, and the rights that exist over them, will need to be resolved by highway authorities on a case-by-case basis.

*Yours sincerely,  
Susan Carter*

SUSAN CARTER



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CYD3/4683/39  
 6 June 1997

Dear Mrs Cook

### UNCLASSIFIED COUNTY ROADS

Thank you for your letter of 3 May to Caroline Daisley about unclassified county roads (UCRs). I am sorry it has taken so long to reply but, as you know, Miss Daisley has recently moved on to different duties and has not yet been replaced.

Firstly, I must explain that the Department of the Environment cannot authoritatively interpret the law as only the Courts are empowered to do that. What is set out below is the Department's informal understanding of the law.

Unfortunately UCRs have never been properly defined in law. In general, a UCR is a highway which is maintainable at public expense over which the public have a right of way for vehicular traffic. Whilst a byway open to all traffic (BOAT) is also defined as carrying vehicular rights, it is a specialist category of highway which is required to be shown on a definitive map of rights of way.

Although they both have vehicular rights, BOATs are defined as being mainly used for the purposes for which footpaths and bridleways are so used. No such presumption exists for UCRs, so the full range of rights can be exercised without any presumption as to the use. In this sense a UCR has "higher" rights than a BOAT, although I accept that this is an arcane distinction.

A highway without any presumption as to the limits of its use (albeit the presumption is a theoretical one) is a more "substantive" category of highway and would subsume the "lower" rights that exist over the same way. If a way was recorded as a UCR, or its equivalent, then in the Department's opinion it would not be appropriate to record it as a BOAT and place it on the definitive map.

It is possible that North Yorkshire County Council has considered the question of the relationship between UCRs and BOATs and have reached a different conclusion. As I said above, as far as I am aware this matter has never been tested in the Courts: until it is it will remain a matter of opinion as to whether a UCR may properly be recorded on a definitive map of rights of way as a BOAT.

I hope to be able to reply to your letter of 10 May about obstructed bridleways shortly.

Yours sincerely

MARTIN STEER



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2 March 1992

Mrs Z Bowles  
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Dear Mrs Bowles

**BYWAYS OPEN TO ALL TRAFFIC AND BLANKET PARISH REVIEWS**

Thank you for your further letter of 16 February. Again, I have to state that what follows is the Department's informal view of the matter: an interpretation of the law can be given only by the Courts.

I hope you will appreciate that I cannot comment on the way in which Devon maintain their records of public highways or how vehicular rights are notated: if you believe they are acting improperly you may wish to raise this with the Department of Transport.

Likewise, because I am not sure what is meant by the term "roads register" (if, as you indicate, Devon mean "the record of public highways kept...by the Land Charges Section"), I am afraid I cannot apply it to your question of whether a proven BOAT can also be on it.

Our understanding is that unclassified county roads are vehicular highways. A BOAT, as defined in the Wildlife and Countryside Act 1981, is a highway "over which the public have a right for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used". Where a RUPP is being reclassified under section 54 of the Act the authority will simply need to be satisfied that vehicular rights exist, before reclassifying it as a BOAT. However, in deciding whether to make a modification order to show a BOAT under section 53, the authority will need to be satisfied a) that vehicular rights exist and b) that the route is used mainly for the purposes for which footpaths and bridleways are so used. Therefore an unclassified county road may be shown on the definitive map if its main use is proven to be as a footpath or a bridleway.

Lastly, it is our informed opinion that suitability is not a consideration when an authority is deciding whether a route should be added to the definitive map.

I hope this is of some help to you.

Yours sincerely

*J. Latham*

MRS J LATHAM  
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7 Sept 87

Ms L Herbst  
 Secretary, Rights of Way Review Committee  
 Greyhounds  
 Sheep Street  
 Burford  
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Your reference

Our reference

Date 9 June 1983

Dear Ms Herbst

At the Committee meeting last October, we agreed to respond in writing to the papers prepared by Mr Thompson and Mr Trevelyan on UCRs and Definitive Maps and this I now do belatedly.

Our views on the two questions posed in the Ramblers' Association paper (September 1982) are given below. These also cover the points made in Mr Thompson's paper, and in the discussion.

a. What can be deduced from a county council list or map showing a particular highway to be an unclassified county road (UCR)?

As is stated earlier in the RA paper, there has never been any statutory requirement for highway authorities to draw up lists exclusively of county roads, the Public Health Act 1925 requirements for lists of streets maintainable at public expense related only to urban areas, and the Local Government Act 1972 Act, which required more comprehensive lists to be maintained, also abolished the term "county road". In view of the lack of statutory requirements for lists of county roads, it is thought likely that not all highway authorities compiled lists using identical criteria. We believe however that in a large majority of authorities, the term 'unclassified county road' was used to cover only those (unclassified) ways which were believed to have vehicular rights over them. Unless there is evidence to the contrary therefore the showing of a way on the list of publicly maintainable highways as an unclassified county road is probably indicative of the existence of an all-purpose highway. Individual authorities may or may not have evidence of the criteria used in compiling their lists.

b. Is there any reason why a way shown on such a list or map as a UCR should not also be shown on a definitive map, and in particular shown as a RUPP?

So far as we are aware no previous official guidance has been issued specifically on this, and neither the advice issued in 1950 or subsequently has covered the point. By open to all traffic are defined in the 1981 Act, and paragraph 15 of Annex A to DOE Circular 1/83 gives clear advice on the criteria to be used in deciding whether ways should be shown on definitive maps as byways. We see no reason why ways which have been listed as UCRs should not be shown on definitive maps, and in particular shown as byways (or, under the 1949/1968 Act system, qualify as RUPPs) provided the criteria are met.

Yours sincerely

  
 C P HART  
 Directorate of Rural Affairs