

The Planning Inspectorate

# RIGHTS OF WAY SECTION

ADVICE NOTE NO 15 – MARCH 2002 (Revised December 2002)

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## BREAKS IN USER CAUSED BY FOOT AND MOUTH DISEASE

### Introduction

1. Inspectors may hear evidence that restrictions on access to claimed rights of way under foot and mouth disease control measures will constitute an “interruption” in user for the purposes of section 31(1) of the Highways Act 1980. This Advice Note explains the Planning Inspectorate and DEFRA’s views on the subject, although it must be emphasised that, as far as we know, the matter has not been tested in court.
2. This Note is publicly available. It is not an authoritative interpretation of the law.

### Background

3. To prevent the spread of foot and mouth disease during the outbreak in 2001, many local authorities restricted access to land under the Foot and Mouth Disease Order 1983 (as amended). The Order permitted closure of land regardless of the presence of rights of way.
4. It may be claimed that this restriction on access constitutes an “interruption” which would prevent the acquisition of rights by deemed dedication under section 31(1) of the Highways Act 1980. The effects of requisition of land during the Second World War under emergency powers may be cited as evidence supporting this argument.

### Consideration

5. The Planning Inspectorate and DEFRA are of the opinion that there is no direct analogy between requisition of land during the war and temporary closures during the foot and mouth epidemic. The key to this is that under section 31(1) the interruption must come from the landowner or someone acting on the landowner’s authority, and there must be an intention to prevent the public’s use of the way.
6. Requisitioning of land under wartime measures effectively displaced the owners’ interest in the land. As the requisitioning authorities obtained simply a right of possession there was, in effect, no-one who had the power to dedicate a right of way over the land during the period of requisition. On the other hand, closure of land under the Foot and Mouth Disease Order did not displace ownership.
7. DEFRA Inspectors have in the past closed public rights of way under the Plant Health (Great Britain) Order 1993. We are not aware that it has been argued that these measures have implications for claims of deemed dedication under section 31(1). Nor are we aware of any case law from which a parallel may be drawn.

8. Over a period of 20 years or more there may well be periods when, for a variety of reasons, a way has not been used. In cases where a landowner's ability to dedicate has not been removed it would be reasonable for an Inspector to take the view that, in a period of 20 years or more, periods of non-use of a way may occur which may last for several months.

## **Conclusion**

9. Against this background, it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classified as an "interruption" under section 31(1).