

Information to Consider before Making an Application to Modify the Definitive Map and Statement of Public Rights of Way

Wildlife and Countryside Act 1981 Section 53 and Schedule 14

**“Wildlife and Countryside (Definitive Maps and Statements)
Regulations 1993” S.I, 1993, No. 12**

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Definitive Map Modification Orders do not extinguish, divert or create public rights of way, they simply seek to amend the legal records to ensure that they show the true existing situation.

An application can request one of the following;

- a) To register a route considered to be a public right of way but not presently shown on the Definitive Map and Statement of Public Rights of Way.
- b) To ask that the status or route of a registered public right of way be changed because it is incorrectly shown on the Definitive Map and Statement of Public Rights of Way.
- c) To delete a registered right of way on the grounds that it is not, and has never been, a public right of way.

Public Rights of Way fall into one of the following four categories:

- a) Public Footpath – routes used by the public on foot;
- b) Public Bridleways – routes used by the public on foot, horseback and bicycle;
- c) Restricted Byway – routes used by the public on foot, horseback and bicycle, and in non-mechanically propelled vehicles; and
- d) Byway Open to All Traffic – routes that are highways for mechanically propelled vehicles, and available to all traffic, but are of a character that are mainly used routes as footpaths or bridleways.

Before deciding whether to make an application, you should consider the following points:

Routes are likely to be public where:

- a) They have been used by the general public and not only tenants or employers of the land in question;
- b) Such use has been ongoing for many years;
- c) They lead from one road, or other public right of way, to another or to a place of public resort such as hilltop, coast or riverbank;
- d) There has been no history of objection to public passage being raised for many years;

- e) They have been provided with stiles, gates, footbridges or other means of passage.

Routes are **not** likely to be public when:

- a) Signs or notices have been erected and maintained clearly denying the existence of a public right of way.
- b) They have been obstructed, unless this has happened only recently.
- c) Only persons living or working on the land in question have used them.
- d) They are of no obvious use to the public as through-routes, leading only to private property.
- e) The public have been regularly turned back or allowed through only with the specific permission of the landowner.

If you decide to make an application to modify the Definitive Map of Public Rights of Way, your submission should consist of four items:

- a) An application form.
- b) A map showing the route.
- c) Evidence to support your proposal which may include:
 - Supporting statements.
 - Letters from people describing their knowledge of the route.
 - Affidavits or statutory declarations prepared with the assistance of a solicitor.
 - Extracts from parish council records, for example, minute book.
 - Maintenance records.
 - Estate Management records, including deeds.
 - Enclosure Awards / Tithe apportionments.
 - Extracts from historical accounts / guide books / articles.
 - Old maps / photographs.
 - Any documents of a legal nature (agreements, court decisions, etc).
- d) A certificate confirming that the owners of the land in question have been informed.

It is essential to use the forms which are prescribed by the Wildlife and Countryside Act 1981, that give you certain rights of appeal which otherwise would not be available. If an application is made other than in the prescribed format, you will have no legal right to appeal if the Council fails to determine your application within twelve months or refuses the application. The Local Government Ombudsman is unlikely to investigate a complaint if the proper application process has been made available to you, but you have chosen not to use it.

Upon receipt of an application the Council will carry out an investigation with a view to determining whether or not to make the requested Definitive Map Modification Order. This will usually involve a site inspection, an assessment of any user based evidence (including witness interviews), historical research, and consultations with user groups. Anyone with an interest in the land (e.g. a landowner or tenant) will also be given an opportunity to submit relevant evidence for consideration. Further information may also be requested from the applicant, or the supporting witnesses.

When the Council's investigations are complete, a decision report will be prepared in order to enable the application to be determined. If this stage in the process has not been reached within twelve months of receipt of a properly made application, the applicant has a right to request that the Secretary of State directs the Authority to make a decision within a defined and specified timescale.

If the Council approves the application, a Definitive Map Modification Order will be made. Notices describing the effect of the Order will be displayed on site, in the local press and be sent to all the interested parties. The Notice will invite anyone who disagrees with the Order to make a formal representation or objection. If no objections are received, or any which are received, are subsequently withdrawn, the Council may confirm the Order itself. If objections are received, and not withdrawn, the Order must be referred to the Secretary of State, via the Planning Inspectorate, who will normally deal with it by appointing an Independent Inspector and calling a Public Inquiry.

If the Council refuses the application, the applicant has a right of appeal to the Secretary of State. The Secretary of State will consider the case, and decide whether to direct the Council to make an Order.