

A guide to definitive maps and changes to public rights of way - 2008 Revision

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1 Introduction

About this booklet

This booklet gives guidance and information about definitive maps - the legal record of public rights of way - and the ways in which both those maps and individual rights of way can be changed. It is written for everyone who may have an interest, whether they are a landowner or farmer, a member of a local council, a group representing users of public rights of way or simply an interested member of the public. In particular it explains the tests that have to be satisfied - and the procedures that have to be gone through - before a way can be said to be a public right of way or before a right of way can be created, diverted or closed.

The booklet has no formal legal status but aims to provide a simple and clear explanation. The subject is a complex one and some matters have, inevitably, had to be simplified. If you have a concern or question about a particular route the relevant local authority (the county council where there is more than one authority) should be able to provide you with further information.

This booklet applies only to England. The law is similar in Wales, but you should ask for guidance from the Welsh Assembly Government, which is responsible for its administration or from the Countryside Council for Wales, or the relevant local authority for matters relating to a particular route. Scotland and Northern Ireland have different legal systems and this booklet is not applicable.

Every effort has been made to ensure the accuracy of the information given. However it is not intended to be a definitive statement of the law, nor can responsibility be accepted for errors or omissions. There are some prospective changes to the procedures described and these are referred to in the text.

This is the second edition of *A guide to definitive maps and changes to public rights of way (NE 112)*, which supersedes the first edition published by the Countryside Agency in 2002 (CA 142). Natural England welcomes any suggestions you have for future editions.

Definitive maps

Our countryside has a priceless heritage of public rights of way. The public have a right to walk on all of them. On about a quarter there is also a right to ride horses or bicycles. On a smaller number there is also a right to drive horse-drawn carriages or other non mechanically-propelled vehicles. On a small proportion there is also a right to ride or drive any type of vehicle, including motor cycles and four-wheel drive motor vehicles.

So that everyone - walker, rider, farmer and landowner alike - may know which paths are public rights of way, Parliament has required certain local authorities, known as surveying authorities to record those rights on special maps and statements, known as definitive maps and statements. The recording of a right of way on the definitive map is a legal record of its existence at the date of the map. This legal protection has both helped to preserve rights of way and also provided the backing for action by local authorities to ensure that they are usable.

Since the requirement to record began in 1949 over 117,000 miles of rights of way have been recorded on definitive maps in England. This information is used by the Ordnance Survey to show rights of way on its Explorer (1:25,000 scale) and Landranger (1:50,000 scale) maps.

Changes to public rights of way

There is a legal principle "Once a highway, always a highway". All public rights of way are highways, so that once a right of way exists it remains in existence unless and until it is lawfully closed or diverted. Such a closure or diversion can arise only out of legal action by either a local authority, a magistrates' court or a government department, or through an Act of Parliament. Acts of Parliament may make changes either for individual rights of way (eg. where the Act authorises a new transport link such as the Channel Tunnel Rail Link) or for all rights of way of a given type, as happened with the extinguishment of rights for mechanically-propelled vehicles over certain routes in the NERC Act 2006 (see p3).

These are the main ways to create new public rights of way:

- dedication by the landowner (called express dedication);
- public use which has been unchallenged by the landowner (called presumed dedication);
- agreement between the landowner and the local authority;
- order made by the local authority.

Prospective change in legislation

Extinguishment of unrecorded rights at the 'cut-off date'

A 'cut-off date' will be specified as either 1st January 2026 or a date up to five years later, when all rights of way over footpaths and bridleways outside Inner London which existed before 1949 and which have not been recorded on definitive maps will be extinguished.

There will be exemptions for paths in certain circumstances, and there is power for the Secretary of State to make exceptions for ways which are the subject of modification orders or applications at the 'cut-off date'. There is also power to extend the date indefinitely in areas where the definitive map provisions did not apply when the legislation was first introduced in 1949 (mainly areas which were county boroughs prior to 1974).

After the 'cut-off date' it will no longer be possible to record additional historic ways on definitive maps as byways open to all traffic, although unrecorded vehicular rights will not be extinguished.

Natural England initiated a 'Discovering Lost Ways' project intended to identify the extent of unrecorded rights, and to encourage their recording. The project established an Archive Research Unit which undertook documentary research in three counties and reported its findings to Natural England. In 2008, following a review of the project, Natural England decided not to undertake any further archive research. Instead it initiated a review of the legislation and associated process, and Defra announced that it would defer a decision on whether to implement the 'cut-off' provisions until that review was complete.

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Definitive maps

2 What is a definitive map

Introduction

A definitive map is a map prepared by a surveying authority which is a legal record of the public's rights of way in one of four categories (footpath, bridleway, restricted byway or byway open to all traffic). If a way is shown on the map, then that is legal, or conclusive, evidence that the public had those rights along the way at the relevant date of the map (and has them still, unless there has been a legally authorised change). But the reverse is not true. So the showing of a way as a footpath does not prove that there are not, for example, additional unrecorded rights for horse-riders to use the way. Nor is the fact that a way is omitted from the definitive map proof that the public has no rights over it.

The definitive map is therefore useful in providing evidence of the public's rights, but may not tell the whole story. A check should be made with the surveying authority to see if it has reason to believe that there are additional rights, as yet unrecorded, over any particular area of land. This can be especially important if the land is for sale or is the subject of a planning application for development.

Definitive maps have to be compiled for all of England (and Wales) except the 12 inner London boroughs, where the borough council can choose whether or not to adopt the procedures and produce a map.

Surveying authorities are under a duty to keep the definitive map and statement under continuous review, and to make modification orders (see p26) as necessary to keep the map and statement up-to-date as an accurate record of the public's rights. Modification orders have to be kept with the map where it is available for public inspection, but to make the map itself more complete, surveying authorities can 'consolidate' it from time to time by incorporating the effects of modification orders on to the map.

When this is done, the map is given a new relevant date.

Surveying authorities which have separate definitive maps for different parts of their area (eg. because of local government reorganisation) have been given powers to merge those maps into one map covering the whole area when they consolidate the definitive map and statement.

The definitive statement

The definitive map is accompanied by a statement which describes each right of way in greater or lesser detail. If the statement defines the position or width of a right of way shown on the map, then that information is conclusive evidence of the position or width of the public's right of way at the relevant date. Similarly, if the statement contains a record of any limitation or condition attached to the public's rights, then that too is conclusive evidence of the existence of such a limitation or condition at the relevant date. An example would be where the statement records as a limitation the right of the landowner to erect and maintain a stile at a particular field boundary on a footpath. As with the definitive map, there may be additional limitations or conditions on the public's rights, as yet unrecorded.

The 'relevant date'

Each definitive map and statement, and each subsequent modification order, has a 'relevant date'. This means that the map provides evidence that public rights existed at that date. It is possible that a legal change, eg. the diversion of a way, has happened since the relevant date and that has not been recorded on the map. However, details of the change should be available for public inspection with the map and statement. If you are in doubt about whether, or how, the map

and statement have been changed in this way, please ask the surveying authority for further information.

The map and statement can be consolidated to incorporate all the changes made by modification orders: a consolidated map has a new relevant date for all the rights of way shown on it.

How can I find out which ways are included on the definitive map?

The definitive map and statement and amending modification orders must be available for the public to inspect free of charge at all reasonable hours. A telephone call to the surveying authority will tell you in which office you will find the map. In addition, in each district in a county there must be available for inspection a copy of at least that part of the map and statement which covers the district, and the modification orders which have amended it: this will often be available at the district council offices. Furthermore, local councils normally have a copy of that part of the map and statement which covers their parish or town, and some libraries have copies of definitive maps and statements for inspection. Some surveying authorities make definitive map information available on their websites.

The Ordnance Survey receives copies of definitive maps and modification and public path orders which have come into operation and uses them to provide the rights of way information that is shown on Explorer (1:25,000 scale) maps (in green) and Landranger (1:50,000 scale) maps (in red). Each map shows the date which Ordnance Survey used as its deadline for rights of way information. However, in case of dispute about the status of a right of way, reference should be made to the definitive map and amending orders, or the surveying authority, rather than the Ordnance Survey map, which cannot in itself provide conclusive evidence.

The four categories of rights of way

As mentioned above, public rights of way are shown on definitive maps in four categories. If a way is shown as a:

- footpath: then that is conclusive evidence that the public had a right of way on foot at the relevant date;
- bridleway: then that is conclusive evidence that the public had a right of way on foot, on pedal cycle, on horseback and leading a horse at the relevant date;
- restricted byway: then that is conclusive evidence that the public had a right of way on foot, on horseback and leading a horse and in or on any vehicle other than a mechanically-propelled vehicle at either 2 May 2006 (where the restricted byway is a former road used as a public path - see p12) or the relevant date of the modification order that caused the way to be shown as a restricted byway;
- byway open to all traffic: then that is conclusive evidence that the public had a right of way on foot, on horseback and in or on vehicles, including motor vehicles and pedal cycles, at the relevant date. Before a way can be shown as a byway, its use by the public must be shown to be mainly on foot or on horseback - the definitive map is not intended to be a map of all of the roads you can drive along

As noted on p4, the public may have rights additional to those shown on definitive maps but as yet unrecorded.

Prospective change in legislation

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There will be exemptions for paths in certain circumstances, and there is power for the Secretary of State to make exceptions for ways which are the subject of modification orders or applications at the 'cut-off date'. There is also power to extend the date indefinitely in areas where the definitive map provisions did not apply when the legislation was first introduced in 1949 (mainly areas which were county boroughs prior to 1974).

After the 'cut-off date' it will no longer be possible to record additional historic ways on definitive maps as byways open to all traffic, although unrecorded vehicular rights will not be extinguished.

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3 What makes a way a public right of way?

Apart from the cases where a new right of way has been specifically created, for example, by means of a public path creation order under the Highways Act 1980 or through an Inclosure Award, ways become public rights of way through dedication of the right to the public by the landowner. In a few cases, the dedication is express - the landowner consciously and deliberately makes a way a public right of way. But in the great majority of cases the dedication is presumed from evidence of :

- the use of the way made by the public;
- the actions - or inactions - of the landowner (see below);
- references to the way in historical documents, eg. old maps.

Documentary evidence

Documentary evidence from, or before, the relevant period can be important in helping to decide the question whether public rights exist. Although, for example, old maps, estate documents, tithe maps, or Inclosure Awards can provide supporting evidence, it may also appear contradictory. Evidence contained in such documents is sometimes open to more than one interpretation claimed, and the strength of that evidence may be contested.

The local record office may be able to tell you which documents it has that may be relevant to a particular way. Some documentary evidence may be sufficient on its own to establish the existence of public rights and, however old the document, the rights will still exist unless there is evidence of a subsequent legally authorised change.

Presumed dedication

The legal principles about presumed dedication go back several centuries, and form part of what is known as common law. But because it was not always clear or easy to apply, Parliament passed new rules, now in section 31 of the Highways Act 1980. However the common law rules still also

apply, so both are described here. Following changes made by the Natural Environment and Rural Communities Act in 2006, it is no longer possible to acquire a right of way for mechanically-propelled vehicles by presumed dedication.

a) Under section 31 of the Highways Act 1980

To establish that a way has become a right of way by means of presumed dedication it is necessary to show firstly that there has been uninterrupted use as of right by the public (not necessarily the same people all the time) over a period of 20 years. Deciding who 'the public' are can sometimes be difficult and may depend on the facts of the case. But in general it should be people other than those working for the landowner concerned, and use as of right excludes use which was known to be with the permission or licence of the landowner. The period of 20 years is counted back from the date on which the public's right was first brought into question, for example through the erection of a fence or locking of a gate across the way, however long ago that date was. Once the date that ended the 20-year period has been determined, evidence of use, or of interruptions of use, after that date is not relevant in deciding whether a public right of way exists. If the public's use has not been brought into question, the date of an application for a modification order can be taken as the end-date for the 20-year period.

b) At Common Law

Dedication may also be presumed to have taken place at common law. Again use must be made as of right, by the public, but the period of use is not fixed and, depending on the facts, can range from a few years to several decades. The burden of proof is on the person claiming the right to show that the owner of the land intended to dedicate a public right of way.

No intention to dedicate

Uninterrupted use by the public over a 20-year period establishes a presumption that the way has been dedicated to the public. But this presumption can be contradicted by evidence to show that the landowner had never intended to dedicate the way. This evidence could be of:

- an interruption of the public's use of the way, or other action by the landowner that made it clear to users at the time that the owner had no intention to dedicate;
- notices clearly displayed on the way, indicating that it was private;
- plans and statutory declarations deposited with the surveying authority or its predecessors - the surveying authority must maintain a register, open to public inspection, of plans and declarations that are currently valid;
- reports from people who can give evidence that a way was private and that no public right of way existed during the relevant period.

Extinguishment of rights for mechanically-propelled vehicles

The Natural Environment and Rural Communities Act 2006 (the 'NERC Act') extinguished rights of way for mechanically-propelled vehicles over routes not shown on the definitive map as byways open to all traffic, subject to various exceptions. These include routes that were shown on a highway authority's list of streets (highways maintainable at public expense) at the date the Act came into effect (2nd May 2006). Where there is historic evidence of rights for vehicles over a way the surveying authority, and the Secretary of State if an order is opposed, will consider whether the NERC Act extinguished rights for mechanically-propelled vehicles or whether any of the exceptions applied. If it is concluded that those rights had been extinguished the way will be recorded as a restricted byway: people will still be entitled to use it in or on vehicles that are not mechanically propelled.

4 Getting the definitive map and statement changed

Definitive map modification orders

As noted above, rights may exist over a way not shown on the map at all, or additional rights may exist over a way shown on the definitive map, even though they are not recorded there. Where such rights are alleged to exist, there are procedures to enable the allegations to be tested. These are set out in the Wildlife and Countryside Act 1981. They allow for a surveying authority to make an order, known as a **definitive map modification order**, to amend the map and statement to ensure that it is a correct record of the public's rights.

Grounds for making an order and the tests to be satisfied

Section 53 of the Wildlife and Countryside Act 1981 provides for six types of modification order:

Modification order to add a way to the definitive map : section 53(3)(b)

Before making an order the surveying authority must have evidence which shows that the right of way has come into being through presumed dedication following use over a period of time which has ended before the making of the order. An example would be evidence of use by the public over a period of 20 years not offset by any evidence that the landowner during that time had no intention to dedicate the way.

Before confirming the order, the authority or the Secretary of State must be satisfied that the right of way has been shown to exist.

Modification order to add a way to the definitive map : section 53(3)(c)(i)

Before making an order the surveying authority must have discovered evidence which (when considered with all other relevant evidence available to the authority) shows that the right of way exists, or has been reasonably alleged to exist. An example would be evidence from documents that showed the way as a public right of way, possibly supplemented by evidence of use.

Before confirming the order, the authority or the Secretary of State must be satisfied that the right of way has been shown to exist.

Modification order to record additional rights over a way already shown on the definitive map : section 53(3)(c)(ii)

Before making an order the surveying authority must have discovered evidence which (when considered with all other relevant evidence available to the authority) shows that the additional rights exist.

Before confirming the order, the authority or the Secretary of State must be satisfied that the additional rights exist.

Modification order to remove some recorded rights from a way shown on the definitive map : section 53(3)(c)(ii)

Before making an order the surveying authority must have discovered evidence which (when considered with all other relevant evidence available to the authority) shows that the recorded rights in question were wrongly recorded.

Before confirming the order, the authority or the Secretary of State must be satisfied that the recorded rights in question were wrongly recorded.

Modification order to delete a way to the definitive map : section 53(3)(c)(iii)

Before making an order the surveying authority must have discovered evidence which (when considered with all other relevant evidence available to the authority) shows that the right of way was wrongly recorded.

Before confirming the order, the authority or the Secretary of State must be satisfied that the right of way was wrongly recorded.

Modification order to amend the particulars contained in the map or statement (without changing the recorded status of the way) : section 53(3)(c)(iii)

Before making an order the surveying authority must have discovered evidence which (when considered with all other relevant evidence available to the authority) shows that the particulars as proposed to be amended will be a correct record of the public's rights.

Before confirming the order, the authority or the Secretary of State must be satisfied that the particulars as proposed to be amended will be a correct record of the public's rights.

Definitive map modification orders are about whether rights already exist, not about whether they should be created or taken away. The suitability of a way for users who have a right to use it, or the nuisance that they are alleged to cause, or to be likely to cause, are therefore irrelevant. So also is the need for public access, locally, if the order alleges that public rights do not exist. See Section 5 for the powers available to make changes to the rights of way network.

Evidence is the key

The definitive map is a legal recognition of existing public rights to walk, ride and use vehicles. As such, any proposal to modify it by means of a definitive map modification order to add a right of way has to be judged by the legal test: "Do the rights set out in the order already exist?". If they do, then the map must be modified, regardless of any effect on anyone's property interests, or whether or not the routes physically exist at the present time on the ground. Similarly, if the evidence in support of the order proves to be insufficient, and the test is not satisfied, then the map remains as it is, however desirable it may seem for the public to have those additional rights.

Evidence is also the key where the proposal is to remove some or all of the rights recorded on a way already shown on the map. In this case it must demonstrate clearly that a right of way, of that status, did not exist when it was first shown on the definitive map, and that an error was made.

The Planning Inspectorate has produced a set of Consistency Guidelines and a series of Advice Notes which are given to inspectors considering opposed definitive map modification orders (see p38).

Applying for a modification order

A surveying authority can make a modification order without receiving an application. The authority has a duty to keep the map under continuous review, and it may find new evidence which suggests the map needs to be amended. But in addition to this, anyone can apply to a surveying authority for a modification order to be made. There is a procedure for doing this which is set out in a flow diagram "Applications for modification orders" on p42. It involves completing:

- an application form and sending it to the surveying authority;
- a 'notice' which must be sent to every landowner or occupier affected by the application; and
- a 'certificate of service of notice' which has to be sent to the surveying authority to say the notice of application has been sent to all who own or occupy land affected.

If the landowners or occupiers cannot be located, the surveying authority has a power to say that the notice can be placed on the land which would usually mean attaching it to a fence or a tree for example.

After the application is made

Entering details on the register of applications

When the authority receives an application it has to enter relevant details in a register, which is available for public inspection at the authority's offices, and via its website. The register has to contain details of applications outstanding on 31 December 2005 or made since, and their progress, except that details can be deleted if an application results in an order coming into effect.

Investigating the application

Once the authority has received the certificate of service of notice, it must investigate the matters in the application. If there is a local or district council or national park authority for the area concerned, it must consult them. The authority must then decide whether to make the order that has been applied for.

If no decision is made within 12 months

If an authority fails to make a decision on an application within 12 months of receiving the certificate, then the applicant may apply to the Secretary of State (via the National Rights of Way Casework Team - see p40 for contact details) for the authority to be given a deadline for its determination of the application. This is an application under Schedule 14 to the Wildlife and Countryside Act 1981. If you use this procedure, it is helpful to provide a copy of the application form, and give any reasons why you consider it should be determined quickly although it is expected that any cases that are over two years old will receive priority status. The Secretary of State has to consult the authority before deciding whether to set a deadline.

If the authority decides not to make an order

When the authority has made its decision, it must tell the applicant and also everyone on whom notice of the application was served by the applicant. If the authority decides not to make the order, the applicant may, within 28 days of the service of the notice of that decision, appeal to the Secretary of State under Schedule 14 to the Wildlife and Countryside Act. The notice of appeal should be addressed to the National Rights of Way Casework Team. It should be made in writing, giving the grounds for the appeal, and be accompanied by copies of the application, the map showing the way concerned, the supporting documentation, and the authority's decision. A copy of the notice of appeal only must also be served on the surveying authority at the same time.

Once the appeal is received the Secretary of State will ask the authority to submit a statement explaining their decision not to make the order. This will be copied to the applicant for comments and these will, in turn, be copied to the authority. In operating the appeal system the applicant is given every opportunity to comment on all submissions relating to the appeal and a decision is only made once both parties have nothing further to add. There may be a site visit by an officer from the National Rights of Way Casework Team but there is no specific provision for a public inquiry to be held at appeal stage. Once the exchange of representations has been completed, the Secretary of State will re-examine the evidence submitted with the application and contained in the representations, to decide whether there is a case for the making of the order, and if so direct the authority accordingly. A direction to an authority to make an order can include a deadline by which the order must be made. The Secretary of State is not empowered to authorise the modification of the definitive map and statement, nor to make the order. There is no charge to apply for a modification order, a direction or an appeal against a surveying authority's decision.

Once the applicant has submitted an appeal under Schedule 14 of the Wildlife and Countryside Act 1981 it is likely that they will be referred to as the appellant for matters relating to that appeal, but remaining as the applicant for matters referring to the original application.

Objecting to a modification order

The procedure for definitive map modification orders is set out in section 8 and in the flowchart entitled "Procedures for modification and public path orders" on p43. In particular there is a requirement to publicise the making of an order by putting a notice in a local newspaper and by placing notices on site at both ends of the way in the order. A period of 42 days is allowed for objections.

An objection must be about whether the order correctly reflects existing public rights. The grounds for objecting must be specified in the objection: the Secretary of State has power to disregard irrelevant objections. It is not necessary to submit evidence at this stage, but a short outline may be useful. The evidence may be expanded upon at a public inquiry or hearing if one is held, and you may call witnesses to

support your case. Their names do not have to be given to the authority before the inquiry. Suggestions that the route in the order could be improved by changing its line cannot be considered at an inquiry into a modification order. See section 5 for the procedures for changing rights of way under the Highways Act 1980.

During the period allowed for objections anyone has the right to ask the surveying authority to tell them what documents, including forms testifying to use of the way, it took into account in deciding to make the order and either to allow them to inspect and copy them if it has them in its possession, or to tell them where they can be inspected. The authority must comply with this duty within 14 days of being asked. However, the authority may still bring forward other evidence at any subsequent inquiry or hearing.

The surveying authority has to send any opposed modification order to the Secretary of State for determination, although in practice the decision is normally delegated to an Inspector from the Planning Inspectorate. See Section 8 for more on how opposed orders are dealt with. It is possible for a surveying authority to make a modification order that affects more than one right of way: for example an order to add three alleged rights of way to the definitive map. It may be that only part of such an 'omnibus' order may be opposed. In such a case, the authority is allowed to split the order into opposed and unopposed parts, and then to confirm the part containing the unopposed proposals, whilst sending the opposed part to the Secretary of State for determination.

Amending a modification order

An Inspector considering an opposed modification order may conclude that the evidence demonstrates that the public's rights are different from those shown in the order. For example, an authority may make an order to add a way to the definitive map as a footpath. Horse-riders object to the order, and bring evidence of use to a public inquiry, sufficient to convince the Inspector that the correct status of the way is bridleway. The Inspector then has power to modify the order so that it adds a bridleway to the map, but must advertise the proposed modification so that objections can be lodged to the proposed amendment, for example by someone who has evidence that horse-riders

used the way only by permission or that their use was interrupted. However, as with modification orders generally, objections can only be on the basis of the evidence (or otherwise) of the existence of public rights - a desire for the way in question to be a footpath rather than a bridleway would not be a valid objection.

'Legal event' modification orders

'Legal event' modification orders are orders under section 53(3)(a) of the 1981 Act made, as their name implies, simply to record on the definitive map legal changes that have already taken place under some other legislation. An example would be to record the fact that a way has been diverted or extinguished. They follow a simpler procedure to that set out in section 8. They do not have to be advertised, are not subject to objections, and take effect as soon as they are made. Orders have to be on display for public inspection, together with the definitive map and statement, in exactly the same way as all other modification and reclassification orders. If you know a case where a 'legal event' modification order might be appropriate, but has not been made, you should discuss it with the surveying authority.

Since April 2008 authorities that are surveying authorities have been able to include in orders that they make to change rights of way provisions that have the effect of modifying the definitive map and statement. In such cases there is no need for the authority to make a separate 'legal event' modification order.

Roads used as public paths, byways open to all traffic and restricted byways

Historically highways were classified in three ways : footpath, bridleway and carriageway, with carriageways being what we now refer to as 'roads'. However, some ancient carriageways have not been given hard surfaces suitable for ordinary modern motor traffic, and these ways are sometimes referred to as 'green lanes' (p33) (although this term has no legal meaning). In order to protect these ways for public use the category of 'road used as a public path' (RUPP) (p35) was introduced when legislation in 1949 first required definitive maps to be compiled. In practice, this was not successful, as there was confusion both about which ways to record as RUPPs, and also about what rights the public had when ways were recorded as RUPPs. Attempts

were made in legislation in 1968 and 1981 to deal with the problem by reclassification, but until recently there were still RUPPs in many parts of Wales. The Wildlife and Countryside Act 1981 required surveying authorities to make definitive map reclassification orders to reclassify those ways shown on the map as a RUPP.

The Countryside and Rights of Way Act 2000 has now reclassified, as restricted byways (p34), ways previously shown on definitive maps as RUPPs. This change took effect on 2nd May 2006.

However the Act also required that any reclassification order made before then, or a definitive map modification order to change the recorded status of a way shown as a RUPP (or an application for such an order) made before then, has to be processed to a conclusion. There may therefore still be outstanding a number of such orders and applications relating to RUPPs.

The procedure for these orders is described in section 8. The condition of the way and its suitability, or otherwise, for motor traffic are not relevant factors that the authority should consider. The procedure is concerned solely with recording the rights that exist (and can therefore be exercised) already.

Grounds and tests : RUPP reclassification orders

A way formerly shown on the definitive map as a RUPP had to be reclassified as follows:

- as a byway open to all traffic if the public can be shown to have a right of way for vehicles;
- as a bridleway if no rights for vehicles can be shown to exist and bridleway rights have not been shown not to exist;
- as a footpath only if neither of the other options applies.

In whichever category a RUPP was reclassified as a consequence of a reclassification order, its surface has to be maintained by the authority. However, reclassification as a byway open to all traffic does not place the authority under any extra obligation to surface the way so as to make it suitable for vehicles; nor does reclassification as a byway limit the ability of the authority to make a traffic regulation order to restrict or prohibit the use of the way by all or certain types of user.

Changes to public rights of way

5 Making changes to public rights of way

Introduction

The closure or diversion of a right of way can only be achieved by a proper legal process. This is normally done by a local authority making a public path order. A public path order can also create a new footpath, bridleway or restricted byway. Although a new path can also be established in other ways, eg. by agreement, an order has the advantage of being a public process. Anyone who has an opinion (not just the owner of the land) can have their views taken into account eg. whether the path is needed or where it should run.

Public path orders follow the procedure set out in Section 8, and illustrated in the flow diagram entitled "Procedures for modification and public path orders" on p43. There are additional methods, mostly used only occasionally, for making changes to rights of way. Some of these follow quite different procedures, and are explained in Section 7.

The process for deciding whether and how any footpath, bridleway or restricted byway should be diverted or closed is a public one. The procedures that have to be followed are designed to ensure that the public are made aware of the change that is proposed, and that anyone who wishes to do so has the opportunity to state their views and have them taken into account before a final decision is made.

It is an offence physically to divert or close a path, even temporarily, without lawful authority and anyone who does so runs the risk of action being taken against them. He or she may be prosecuted, for example, or have to pay the local authority's costs in removing the obstruction. The only course of action that is open to anyone who wants to change a right of way, therefore, is to try to persuade one of the authorities with the necessary power to make a public path order.

Who might want to change the rights of way network?

Proposals to change the rights of way network can arise from applications or requests made to the local authority (eg. from local residents, path users, farmers or landowners) or the authority itself may propose to make a change.

Path users might want a change that gives them access to a new area, or one that gives them more interesting views, a more direct route or a better surface to walk or ride on. A farmer might want a change to reduce interference with agricultural operations. A landowner might want a change to increase privacy. A developer might want a change so that the path fits in better with development proposals. The highway authority might want a change because of difficult maintenance problems such as permanently boggy ground or natural erosion, to improve the amenities in the area, or increase path users' safety and enjoyment by avoiding the need to walk or ride on roads.

Rights of way improvement plans

Changes may also be proposed as a result of policies in a highway authority's rights of way improvement plan. Authorities had to prepare these plans by November 2007, although not all complied with that duty. An authority's plan has to be available for public inspection at its offices, and on its website. In considering the confirmation of a public path order, the order-making authority and the Secretary of State are obliged to have regard to extent of any 'material provision' in such an improvement plan.

'Access land'

The rights of way improvement plan may improve proposals to improve the connection between the rights of way network and the areas

of open country and registered common land over which a right of access on foot has been created under Part I of the Countryside and Rights of Way Act 2000. Natural England has power to apply to the Secretary of State for a public path creation order to be made to improve access to that land. But the existence of the right of access to open country or common land is not to be taken into account when considering proposed changes to rights of way. For more information about 'access land' and the public's rights see Managing Public Access and Out in the Country (p38).

What reactions might they get?

Other people's reaction to a proposed change will often depend on how they see their own interests being affected. If the change is one that they might have sought themselves or which gives them benefits they are likely to agree to it. If they see it as harming their interests, they are likely to oppose it.

Peoples' attitudes may also be coloured by past events on the path or elsewhere on the same land-holding. If previous attempts have been made to obstruct the path, to divert it unofficially or discourage people from using it, or if there is a history of trespass, misuse or vandalism on the land, it is likely to be more difficult to achieve agreement to any formal proposal to change the path or to create a new one.

Who decides whether the change should take place?

It is for the local authority to decide if it wishes to make a public path order. Before it decides to do so, it must be satisfied that the tests relevant to the particular type of order have been satisfied. However, the authority is not obliged to make an order.

Once the order is made, however, it must be advertised and anyone can object to the proposal. Unresolved objections are considered not by the authority, but by an Inspector appointed by the Secretary of State for the Environment. It is only after the order has been finally approved that the changes can legally take effect, either on a specified date or when any necessary works have been carried out on the ground. See Section 8 for more detail of these procedures.

In areas where there is both a county council and a district council, an applicant may ask either (or both) of the authorities to make an order. If no authority is prepared to make an order the applicant can ask the Secretary of State to do so. However the Secretary of State exercises his power to make orders only very rarely and in exceptional cases.

Deciding whether to apply for a public path order

Going through the steps laid down by Parliament to change a footpath or bridleway inevitably takes time. They are also likely to involve both the applicant and the local authority in considerable expense. Proposals may give rise to local controversy, and if someone's interests in a property are adversely affected by a confirmed order the local authority may be required to pay them compensation. The authority also has to be satisfied that its other legal obligations are met, for example its duties as a service provider under the Disability Discrimination Act.

Careful consideration is therefore needed before deciding whether to apply for a public path order. The Rights of Way Review Committee has published a Practice Guidance Note *Securing agreement to public path orders* (see p38) from which the following is taken:

"Applicants for orders should bear in mind that there must be good reasons for wanting to make any changes to the existing network. Public rights of way and private rights of ownership should not be interfered with lightly. The 'do nothing' option should always be evaluated alongside any proposals for change. It may prove to be the best option even though the existing situation may be inconvenient for the owner or inadequate for the user."

Prospective change in legislation

Temporary diversion orders

New powers will be given to occupiers of land over which paths run to divert them for a limited period to allow specified dangerous activities to take place on the land. The highway authority will have a duty to ensure that the rules governing such diversions are adhered to by occupiers.

Power to apply for certain orders

Those who own lease or occupy land used for agriculture, forestry or the breeding or keeping of horses will be given a formal right to apply for diversion and extinguishment of footpaths and bridleways across their land. There will also be formal rights of application for school proprietors to apply for special diversion and extinguishment order for school security and for English Nature to apply for SSSI diversion orders. Natural England will be given power to apply to the Secretary of State for the making of public path creation orders to provide access to access land.

Register of applications for public path orders

Order-making authorities will be required to keep, and make available for public inspection, a register of the applications which they have received under the new powers to apply for orders (except for SSSI diversion orders).

6 The main types of public path order

Under the Highways Act 1980

The orders most commonly made to change rights of way are those made under the Highways Act 1980 : sections 26 (public path creation order), 118 (public path extinguishment order) and 119 (public path diversion order).

Before making such an order the authority has to consult any other local authority (including a national park authority, if there is one) for the area, but not local councils. If the right of way is in a National Park it also has to consult Natural England. However these bodies cannot veto the making of an order.

If the authority wishes to make an order for a path outside its area it has to obtain the consent of every authority for the area concerned: this normally arises only when there is a proposal to change a right of way that crosses the local authority's boundary.

Grounds for making an order and the tests to be satisfied

Public path creation order : creation of a new footpath, bridleway or restricted byway or creation of a bridleway or restricted byway over an existing public footpath or of a restricted byway over an existing bridleway

It must appear to the authority that there is a need for the new path or way and they must be satisfied that it is expedient to create it having regard to:

- the extent to which it would add to the convenience or enjoyment of a substantial section of the public or of local residents;
- the effect that the creation would have on the rights of those with an interest in the land, taking into account the provisions for compensation.

Public path extinguishment order : extinguishment of an existing footpath, bridleway or restricted byway

Before making an extinguishment order, it must appear to the authority that it is expedient to stop up (extinguish) the path or way on the ground that it is not needed for public use.

Before confirming an extinguishment order the authority or the Secretary of State must be satisfied that, it is expedient to confirm it having regard to the extent to which the path or way is likely to be used and the effect which closure would have on land served by it, taking into account the provisions for compensation.

Both in making and confirming an extinguishment order, the authority and the Secretary of State must disregard any temporary circumstances (such as obstructions) preventing or diminishing the use of the path or way by the public.

Public path diversion order : diversion of an existing footpath, bridleway or restricted byway

Before making a diversion order the authority must be satisfied that it is expedient to divert the path or way in the interests either of the public or of the owner, lessee or occupier of the land crossed by the path or way.

The authority must also be satisfied that the diversion order does not alter any point of termination of the path or way, other than to another point on the same path or way, or another highway connected with it, and which is substantially as convenient to the public. Nor can the termination

be altered where this is not on a highway, ie. a cul-de-sac.

Before confirming a diversion order the authority or the Secretary of State must be satisfied that:

- the diversion is expedient in the interests of the person(s) stated in the order;
- the path or way will not be substantially less convenient to the public as a consequence of the diversion;
- it is expedient to confirm the order having regard to the effect it will have on public enjoyment of the path or way as a whole, on other land served by the existing path or way and on land affected by any proposed new path or way, taking into account the provisions for compensation.

In practice the Secretary of State disregards any temporary circumstances (such as obstructions) preventing or diminishing the use of the path or way by the public when considering an opposed diversion order.

Concurrent orders

An authority may sometimes make two or more orders that it wishes to be considered concurrently. For example, a creation order may be made in association with an extinguishment order. It is still necessary, however, to ensure that each order meets the appropriate tests and criteria laid down in the legislation. So in the example above, the creation order has to be considered on its own merits. If it is decided to confirm the creation order the extent to which the newly-created path or way would provide an alternative path or way to that proposed for closure can then be taken into account in considering the extinguishment order.

The Department of Environment, Food and Rural Affairs has advised authorities that if objections are made to one of the concurrent orders but not the other, both orders should be submitted to the Secretary of State for determination.

The needs of agriculture, forestry and nature conservation

In making any public path or rail crossing order under the Highways Act 1980, the authority must also have due regard to the needs of nature conservation, agriculture and forestry. The term 'agriculture' is defined as including the breeding or keeping of horses.

Code of practice for the creation of new rights of way

A guide to the creation of new rights of way and the compensation that might be payable has been published jointly by the former Countryside Agency (now part of Natural England) and the Countryside Council for Wales (see p38).

Paths affected by development

The other commonly-used power is that contained in section 257 of the Town and Country Planning Act 1990, under which an order can be made for a footpath, bridleway or restricted byway to be closed or diverted to enable development to take place. Development in this context includes buildings or works for which planning permission has been granted and development that is proposed by a government department.

Orders are made by the planning authority that granted the planning permission, or which in normal circumstances would have granted the permission. The authority does not have to consult any other authority before making an order.

Because the need for the closure or diversion arises from the granting of planning permission, it is important that the authority takes the existence of the path into account when considering the planning application and consider what effect the development will have on the path. The authority must publicise any planning application it receives which affects a right of way, by putting an advertisement in a local newspaper and by placing a notice on site. It must then consider any representations it receives in response to this publicity.

The granting of the planning permission inevitably constrains the scope for debate about an order under section 257. But while it is not open to question the merits of a planning permission when considering such an order, it should not be assumed that the order has to be made or confirmed simply because planning permission exists. The courts have held that there is a need to consider the merits of the proposed

change and the effect that it will have on the rights of those affected by it, especially as there is no provision for compensation.

The powers under this section are for an order to be made to enable development to be carried out. An order cannot be made or confirmed, therefore, if the development has already been completed, or is substantially complete; some other way will have to be found of resolving the problem.

Orders under section 257 may be made only for footpaths, bridleways and restricted byways. Where development affects other highways, including ways recorded on definitive maps as byways open to all traffic, similar powers under section 247 can be used: in these cases the order is made by the Secretary of State, except in Greater London, where the order is made by the London borough council.

Grounds for making an order and the tests to be satisfied

Diversion or extinguishment of footpaths, bridleways and restricted byways affected by development

Before making an order the authority must be satisfied that it is necessary to do so to enable development to be carried out:

- in accordance with a planning permission that has been granted; or
- by a government department.

Before confirming an opposed order the Secretary of State must also be satisfied that the above criteria have been met.

7 Other ways of changing or restricting use of rights of way

This booklet deals only with the most common types of order made in relation to footpaths and bridleways. Several other types of order can be made, which may, or may not, follow similar procedures. In addition to the powers to create new rights of way by order, it is open to any landowner to agree the creation of a footpath, bridleway or restricted byway either with the local authority or local council.

Other types of order

Orders to divert or extinguish byways and other highways with vehicular rights are normally made under section 116 of the Highways Act and do not follow the procedures set out above. Important differences include the fact that such orders are made not by the authority but by a magistrates' court (on application by the highway authority); that it is the magistrates who also determine any objections; and that the local council have the power to veto an order by refusing to consent to the authority's application. The limits on the recovery of the authority's costs set out above similarly do not apply to section 116 orders; anyone who asks the authority to apply for an order may be asked to meet the whole of the authority's costs.

It is occasionally necessary to use these powers in connection with a footpath, bridleway or restricted byway, for example where the path is being dealt with simultaneously with a vehicular right of way. However, the Secretary of State has advised authorities that they should not use these powers in respect of footpaths, bridleways and restricted byways unless there are good reasons for doing so.

Special diversion and extinguishment orders for school security

Highway authorities have been given powers to make diversion or extinguishment orders for the purposes of school security. These powers apply not only to footpaths, bridleways and restricted byways, but to all ways shown on definitive maps. The powers apply to all school sites.

Grounds for making an order and the tests to be satisfied

Special extinguishment order for school security

- Before making an extinguishment order, it must appear to the authority that it is expedient to stop up (extinguish) the path or way for the purpose of protecting the pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity, or any other risk to their health or safety arising from such activity. The authority must also consult the Police Authority.
- Before confirming an order, the authority or the Secretary of State has to be satisfied that the extinguishment is expedient for the reasons given above for making an order and that it is expedient to confirm the order having regard to all the circumstances and in particular to:
 - any other measures that have been or could be taken for improving or maintaining the security of the school;
 - whether it is likely that the coming into operation of the order will result in a substantial improvement in that security;
 - the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the path

or way rather than stopping it up;

- the effect of extinguishment on land served by the way taking into account any compensation payable under section 28 of the Highways Act 1980.

Special diversion order for school security

- Before making a diversion order, it must appear to the authority that it is expedient to divert the path or way for the purpose of protecting the pupils or staff from violence or the threat of violence, harassment, alarm or distress arising from unlawful activity, or any other risk to their health or safety arising from such activity. The authority must also consult the Police Authority.
- Before confirming a diversion order the authority or the Secretary of State has to be satisfied that the diversion is expedient for the reasons given above for making an order and that it is expedient to confirm the order having regard to all the circumstances and in particular to:
 - any other measures that have been or could be taken for improving or maintaining the security of the school;
 - whether it is likely that the coming into operation of the order will result in a substantial improvement in that security;
 - the effect that the order would have over land served by the existing right of way and land over which the new right of way would be created.

Special diversion and extinguishment orders for crime prevention

Highway authorities have been given powers to make diversion or extinguishment orders for the purposes of crime prevention, but only in those parts of their areas designated by the Secretary of State after an application by the authority. These powers apply not only to footpaths, bridleways and restricted byways, but to all ways shown on definitive maps.

Grounds for making an order and the tests to be satisfied

Special extinguishment order for crime prevention

- Before making an extinguishment order, it must appear to the authority that it is expedient to stop up (extinguish) the path or way for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that premises adjoining or adjacent to the path or way are affected by high levels of crime, and that the existence of the path or way is facilitating the persistent commission of criminal offences. The authority must also consult the Police Authority.
- Before confirming an order, the authority or the Secretary of State has to be satisfied that the extinguishment is expedient for the reasons given above for making an order and that it is expedient to confirm the order having regard to all the circumstances and in particular to:
 - whether, and if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under the Crime and Disorder Act 1998;
 - the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the path or way rather than stopping it up;
 - the effect of extinguishment on land served by the way taking into account any compensation payable under section 28 of the Highways Act 1980.

Special diversion order for crime prevention

- Before making a diversion order, it must appear to the authority that it is expedient to divert the path or way for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that premises adjoining or adjacent to the path or way are affected by high levels of crime, and that the existence of the path or way is facilitating

the persistent commission of criminal offences. The authority must also consult the Police Authority.

- Before confirming a diversion order the authority or the Secretary of State has to be satisfied that the diversion is expedient for the reasons given above for making an order and that it is expedient to confirm the order having regard to all the circumstances and in particular to:
 - whether, and if so, to what extent the order is consistent with any strategy for the reduction of crime and disorder prepared under the Crime and Disorder Act 1998;
 - the effect that the order would have over land served by the existing right of way and land over which the new right of way would be created.

Rail crossing orders

Special powers to close or divert footpaths and bridleways that cross railway lines on the level were introduced into the Highways Act 1980 by the Transport and Works Act 1992. The powers are in Sections 118A and 119A and operate in a similar way to the powers in Sections 118 and 119, but are directed primarily at improving public safety. So as to avoid creating a cul-de-sac that might encourage people to trespass onto the railway, an order may also provide for the extinguishment or diversion of any sections of path that lead up to the level crossing.

An application for such an order must be made by the railway operator and must be in the form as prescribed in regulations. These require the applicant to provide information on the need for the order and the opportunity for alternative action, such as safety improvements to the existing crossing. The 'railway operator' is whoever is responsible for maintaining the railway track; if a separate body operates the trains they have no right to apply. Since these orders are concerned with public safety and may need to be dealt with quickly, the Secretary of State has special reserve powers; if the authority has not made and confirmed an order (or submitted an opposed order for confirmation) within six months of receiving a valid application, he may intervene and make an order himself. Guidelines about the safety requirement for footpaths and bridleways at level crossings originally produced by the Health and Safety Executive are now available from the Office of Rail Regulation (see p39).

Grounds for making an order and the tests to be satisfied

Rail crossing diversion or extinguishment orders

Before making an order, the authority must be satisfied that it is expedient to do so in the interests of the safety of members of the public who use, or are likely to use, the crossing.

Before confirming an order the authority or the Secretary of State must be satisfied that it is expedient to do so in all the circumstances and particularly:

- whether it is reasonably practicable to make the crossing safe;
- the arrangements that have been made (if the order is confirmed) for barriers and signs to be erected and maintained.

In considering the objections to an order, the Secretary of State may consult the Secretary of State for Transport on whether a bridge or tunnel should be provided at or reasonably near to the crossing as an alternative measure.

A rail crossing diversion order shall only alter the point of termination of a path:

- if that point is on a highway over which there is at least a similar right of way; and
- to another point on the same highway or a highway connected to it.

SSSI diversion orders

Highway authorities have powers to divert all footpaths and bridleways, and any restricted byways and byways open to all traffic shown on definitive maps, in order to prevent damage to the nature conservation features of sites of special scientific interest (SSSIs). The powers are exercisable when an application has been made to the authority by Natural England.

Creation agreement made by a local authority

Under section 25 of the Highways Act 1980, a local authority may enter into an agreement with anyone having the capacity to dedicate a footpath, bridleway or restricted byway in its area. Before making such an agreement the authority must consult any other local authority or any National Park authority for the area, but it does not have to consult a local council or the public. The authority must have regard to the needs of agriculture (including the breeding or keeping of horses), forestry and nature conservation.

The agreement may provide for payments to be made, and for the new path to be subject to limitations and conditions. When an agreement is made, the authority must ensure that the path is physically created and must also publish a notice in a local newspaper informing the public. A path created by agreement under section 25 automatically becomes maintainable at public expense.

Code of practice for the creation of new rights of way

A guide to the creation of new rights of way and the compensation that might be payable has been published jointly by the former Countryside Agency (now part of Natural England) and the Countryside Council for Wales (see p38).

Creation agreement made by a local council

Under section 30 of the Highways Act 1980 a local council may enter into an agreement with anyone having the capacity to dedicate a highway (including a footpath, bridleway or restricted byway) in its area. It has to be satisfied that the highway would be beneficial to the inhabitants of all or part of the parish or town, and can only enter into an agreement in respect of land in its own parish or an adjoining one.

Unlike the local authority, a local council is under no obligation to take into account the needs of agriculture, forestry or nature conservation when agreeing to create a highway; to see that the path is created physically; or to publicise its existence. The council may carry out works in connection with the path or way including maintenance and improvement, or may contribute to such expenses, but it has no power to pay compensation. Nor is the path or way automatically maintainable at public expense. However the duties of the highway authority to signpost and waymark the path or way and record it on the definitive map still apply.

Restrictions on use of rights of way

Traffic regulation orders

There are powers that can be used in certain circumstances to restrict access to rights of way. Traffic authorities can make traffic regulation orders (TROs) on all highways, including footpaths and bridleways. These are normally used only temporarily, for example to avoid danger when works are taking place in the highway or on adjoining land, but they can be permanent, for example to ban all or some motor vehicles from an unsurfaced road. National Park authorities have power to make TROs on rights of way in their area.

Gating orders

Highway authorities also has power to make orders similar to traffic regulation orders that allow highways to be 'gated' through the erection of gates or other barriers that can be locked to some or all users at all or certain times.

Prevention of animal disease

Defra has power to restrict access to rights of way to prevent the spread of animal disease: these powers were used extensively in 2001 when there was an outbreak of foot-and-mouth disease.

Prospective changes in legislation

Temporary diversion orders

New powers will be given to occupiers of land over which paths run to divert them for a limited period to allow specified dangerous activities to take place on the land. The highway authority will have a duty to ensure that the rules governing such diversions are adhered to by occupiers.

Procedures

8 The stages of an order

The terms used in connection with orders can be confusing. An authority **makes** an order, but this is the initial stage, not the end of the process. The **right to object** comes when the order is made and advertised. The conclusion of the process comes when a decision is made to **confirm** the order (with or without modifications) or **not to confirm** it.

There are some differences between modification orders and public path orders and these are identified in the text below, in the respective sections on the different types of orders and in the flow diagram on order procedures on p43.

Applications

There is a formal application procedure for modification orders although it is possible for a surveying authority to make an order without having received an application. A surveying authority has to keep a public register of any applications for modification orders.

For public path orders there is no formal application procedure but the legislation envisages that applications will be made, as it empowers local authorities to charge applicants and to require them to enter into agreements to defray certain costs. For rail crossing orders the application is made by the railway operator, and for SSSI diversion orders the application is made by Natural England.

Consultation

The requirement to consult varies according to the type of order being sought. For modification and public path orders the other local authority for the area (if there is one) has to be consulted. For modification orders only, the local council or parish meeting also has to be consulted. There is no legal requirement to consult the owner and occupier of any of the affected land or any organisations representing users of rights of way.

In practice many authorities do find it helpful to carry out such consultations. They are encouraged to do so by the Department of Environment, Food and Rural Affairs (in circular 1/08) and by the Rights of Way Review Committee.

Deciding whether to make an order

Orders are not made automatically each time someone applies but are at the discretion of the local authority. In taking a decision the authority will need to make a judgment on any conflicting points of view about the application or proposal.

Changes can only be made for one or other of the reasons provided for in the legislation. Before making an order the authority has also, therefore, to be certain that the various tests imposed by the Acts can be satisfied. There is no right of appeal against a local authority's refusal to make a public path order, but there is a right to ask the other authority (where there is one) or the Secretary of State to make the order. There is a right of appeal against a surveying authority's refusal to make a definitive map modification order which has been the subject of a formal application.

Making the order

The order has to be made in the form set out in the relevant regulations. It must contain a plan. There also has to be a notice that briefly describes what effect the order will have; states where the order and plan can be inspected free of charge and where a copy can be purchased; and gives the address to which any objections should be sent and the date by which they must be received. A period starting on the date the notice is first published must be allowed for objections (this is at least 28 days for public path orders, and 42 days for definitive map modification orders).

Giving notice

Not less than 28 days before the closing date for objections to a public path order (42 days for a definitive map modification order) the authority must do everything set out below.

The notice must be:

- Published in a local newspaper;
- Sent to anyone who has formally requested, and paid for, notice of such an order;
- Prominently displayed at council offices in the locality, and at any other places the authority considers are appropriate.

The notice and a plan must be:

- Prominently displayed at the ends of the part of a path affected by the order;
- This plan must show, as a minimum, the effect of the order on that path.

The notice, order and the plan that forms part of the order must be:

- Sent to any other local authorities in the area, including the local council or parish meeting;
- Sent to the owners, occupiers and lessees of any land affected by the order;
- Sent to the prescribed bodies (see p28).

Statement of reasons

There is no formal requirement which obliges an authority to set out its reasons for making an order. It is, however, often helpful if it does so and this has been recommended by the Rights of Way Review Committee in Practice Guidance Note 3 (see p38).

Objections

Objections must be in writing and reach the authority by the closing date set out in the notice. They should state clearly the objector's reasons for opposing the order, and those reasons must relate to the grounds and tests which apply to that particular type of order.

For example, objections can be made to a public path order, on the grounds that the tests set out in the Act have not been satisfied eg. that a path proposed for closure is, in fact, needed for public use; to the principle of what is in the order eg. that a path should not be diverted at all, or should not be diverted to the particular new line;

or to the details of the order, eg. that the proposed new path is not wide enough. All are valid objections.

For a modification order, the tests are solely about whether the evidence does or does not justify the change to the definitive map contained in the order, eg. whether there is sufficient evidence of use by the public to justify the addition of a way to the map. The Secretary of State has power to disregard objections which do not specify the grounds for objection or where the grounds put forward are irrelevant.

Unopposed orders

If no objections are made within the objection period, or any objections that are made are later withdrawn, the authority may confirm the order itself as an unopposed order. But it can only confirm the order as it was made.

If the authority wants to change the order in any way it must submit the order to the Secretary of State (even if there are no objections) with a request that the order be confirmed with appropriate modifications.

Opposed orders

If there are objections to an order the order-making authority cannot determine the objections itself or confirm the order. In the case of a public path order the authority can decide not to proceed with the order, in which case it has to make, and publicise, a decision not to confirm the order. However for a modification order the surveying authority has to submit the order for determination, although it can, if it wishes, submit it with a request that the order be not confirmed (for example, if it has discovered an error in the order, or if the objections have contained new evidence which has caused the authority to change its conclusion about the correct status of the way).

Determination of opposed orders is by the Secretary of State, but there is a power to transfer the decision-making to an inspector from the Planning Inspectorate and this is normally used. In a few special cases the decision will be made not by the Inspector, but by the Secretary of State, to whom the Inspector will report. In such cases the Secretary of State has to tell the objectors the reason.

The Inspector can deal with the order either by

holding a public local inquiry, or by holding a hearing, or by an exchange of correspondence - the 'written representations' procedure. The Planning Inspectorate will correspond with all objectors to an order about the procedure that will be followed. It will also send its publication on the handling of public path and definitive map orders. This explains the rules that now apply when orders are considered at a public inquiry or hearing, and the similar procedure that the Inspectorate applies when the written representations procedure is used. The rules, and the procedure for written representations, set a timetable for the submission of statements of case and evidence which have to be followed by all the parties concerned.

At a public inquiry

A public inquiry is held in the locality, for example in the local village hall, to hear the arguments and evidence for or against the order. The Planning Inspectorate notifies each objector of the details of the inquiry and also asks the authority to put up notices and place an advertisement in a local paper. Anyone can attend an inquiry but only those who have made formal objections have a right to speak. Others may do so at the discretion of the Inspector.

Once the inquiry has opened, the Inspector has full jurisdiction over the proceedings. It may very occasionally be possible to make special arrangements for those who cannot get time off work. This should be raised with the Inspector at the start of the inquiry. At the inquiry the Inspector will ask for the names of those who wish to speak and, where appropriate, the organisations they represent. An order of appearance will then be decided with allowances made wherever practicable for anyone who has limited time to attend the inquiry, eg. they cannot get time off work.

A representative from the order-making authority will state its case, calling whichever witnesses it wishes. Statements made by such witnesses should be made available to objectors. The objectors are entitled to cross-examine the witnesses but not question the representative.

The objectors will then be called upon to make their case and their witnesses may be called and cross-examined. The Inspector may question any of the participants at the inquiry. The authority will then make a closing statement. After the

closing statement, the Inspector will hear no further representations but will announce the arrangements for the site inspection. This will either be alone or accompanied by both parties. During the visit the Inspector may ask questions about the route to clarify any of the points raised at the inquiry. However, there will be no re-opening of issues raised during the inquiry. The Inspector may also make an unaccompanied visit before the inquiry, without giving notice, or may choose to make an accompanied visit during the course of the inquiry.

In making a decision the Inspector will consider the oral evidence given and also any written submissions presented during the inquiry, or received beforehand.

At a hearing

A hearing is less formal than a public inquiry, and takes the form of a round-table discussion led by the Inspector. Witnesses are not called or cross-examined. Details of the procedure at hearings are contained in the Planning Inspectorate's booklet.

Written representations

If an opposed order is dealt with by written representations the Inspectorate will invite each party to comment on views expressed by the other. Correspondence continues to be exchanged, through the Inspectorate, until each side has had the opportunity to comment fully on everything the other party has said. The Inspector will also make a site visit (normally unaccompanied) before coming to a decision.

The decision

The decision is contained in a letter that summarises the evidence presented to the Inspector, and explains the reasons for the decision. A copy of the letter will be sent to the order-making authority, to those who made formal objections, and to anyone who requested a copy.

Modifications to the order

The Inspector will sometimes decide that the order should be modified, and can make minor modifications as part of the decision unless the modifications affect land not affected by the

order, eg. to make a diversion follow a different route. If this is the case, the Inspector's proposals must be advertised and a second local inquiry may have to be arranged if further objections are received. The second inquiry is primarily concerned with the proposed modifications, however, and the Inspector will only consider representations about the unmodified part of the order if they raise new issues.

Modifications cannot be made to correct serious legal errors or discrepancies. If the order is found to be defective it will have to be rejected, regardless of the merits of the proposals. A new order will then have to be made if the authority wishes to proceed with the proposal.

Confirmation

If and when the order is confirmed, either by an Inspector or by the authority, the authority must give notice of its confirmation in the same way as it gave notice of the making of the order. If the order is not confirmed, then the authority has to inform those people or bodies who were notified of the making of the order, but does not have to publish notice of the decision in the press, nor put notices up on the path.

Challenge in the courts

Any challenge in the High Court can potentially be the subject of an appeal to the Court of Appeal and thence to the House of Lords. Legal action of this sort can be very costly and should not be commenced without first seeking legal advice.

Challenging a decision to confirm an order
A decision to confirm an order can only be challenged on legal grounds in the High Court. To be successful, it would be necessary to show either:

- that the order-making authority, the Inspector or the Secretary of State exceeded their powers in some way; or
- that any of the relevant requirements were not complied with, and that consequently your interests were substantially prejudiced.

The High Court cannot change the decision: it can only quash the order. Any application to challenge a decision must be made to the High Court within six weeks of the confirmation of an order.

Challenging a decision not to confirm an order
There is also power to challenge, by way of application for judicial review, a decision not to confirm an order (this would only apply if the local authority or the Inspector had abused their powers or had acted unreasonably). In such a case, the Court has power to direct the authority or Secretary of State to reconsider the case. Application has to be made promptly and within three months of the date of the decision you are challenging.

If the High Court does not uphold a challenge, there is no other way that the decision can be overturned.

Coming into operation of orders

Modification orders

Modification orders come into operation on the date they are confirmed, and so provide conclusive evidence of the existence of public rights as specified in the order as from that date.

Public path orders

The confirmation of a public path order does not automatically mean that the legal change has occurred. When that happens depends on the wording of the order. In some cases the order takes effect when it is confirmed, but normally it will be when the authority certifies that the new path or way is ready and fit for the public to use. In some cases a further notice of coming into operation has to be published so that the public can be aware that the change has taken place. If the new path or way is not certified as fit for use, the order will not come into operation even though it has been confirmed.

Amending the definitive map and statement

The definitive map and statement is amended only after a path order has come into operation. To do this a separate 'legal event' modification order has to be made by the surveying authority unless the order has been made by that authority and contains provisions that modify the definitive map and statement.

Amending the Ordnance Survey map

The order-making authority has to notify Ordnance Survey of the confirmation and coming into operation of modification and public path orders. It will amend its maps when they are next revised, but this may be some years later.

Marking the change on the ground

It is the responsibility of the highway authority to see that any new path created by a public path order is properly signposted and waymarked (even if it is not the authority that made the order). Although there is no specific requirement to put up a sign on any length of former path to indicate that it has been closed, it is often helpful for this to be done and for the sign to indicate where the new path (if any) runs.

The prescribed bodies

The following bodies are prescribed to receive copies of modification and public path orders and accompanying notices and orders.

For all orders in England:

- Auto Cycle Union
- British Driving Society (modification orders only)
- British Horse Society
- Byways and Bridleways Trust
- Cyclists Touring Club
- Open Spaces Society
- Ramblers' Association

For orders in part of England:

- Chiltern Society
- Peak and Northern Footpath Society

Prospective changes in legislation

Power to apply for certain orders and register to be kept of such applications

Those who own, lease or occupy land used for agriculture, forestry or the breeding or keeping of horses will be given a formal right to apply for diversion and extinguishment of footpaths and bridleways across their land. There will also be formal rights of application for school proprietors to apply for special diversion and extinguishment orders for school security. There will also be requirements for registers to be kept of such applications.

9 Costs and compensation

Costs arise in making and advertising an order and in determining any objections. Compensation may also become payable if a public path order is confirmed which adversely affects someone's interests in a property.

Costs of orders

Modification orders

The costs of modification orders are borne by the surveying authority, and there is no power to charge applicants for modification orders either for their applications or for any subsequent appeals.

Public path orders

An applicant who expects to gain some financial benefit from extinguishing or diverting a path will normally be expected to bear at least part of the costs associated with the order.

Local authorities have powers to recover from the owner, occupier or lessee of the land the costs of making up a newly created path and any compensation that may be payable arising from a public path diversion order (eg. where the diversion puts the path onto a neighbour's land).

Regulations introduced in 1993 also enable authorities to recover their advertising and administrative costs in making a public path diversion or extinguishment order, a rail crossing order or an order to divert or extinguish a footpath or bridleway to enable development to take place. They can also recover costs associated with a public path creation order where this has been made concurrently with a public path extinguishment order.

The costs that can be charged to the applicant include the cost of putting in one local newspaper the notices of the making, confirmation and coming into effect of a public path order. The applicant will also be required to contribute towards the authority's costs in making the order. The authority has discretion, however, to take into account factors such as the applicant's financial hardship or the potential benefits to rights of way users and may waive all or part of the charge where appropriate.

The fact that an order is not confirmed does not mean that the applicant is automatically entitled to a refund. Costs must be refunded, however, if the authority decides not to proceed with an order, eg. they fail to confirm an unopposed order, or if the order cannot be confirmed because it has been invalidly made.

Costs at an inquiry

Any application by one party that its costs at an inquiry should be met by another party will be decided by the Department of Environment, Food and Rural Affairs. Its policy is that the parties at a local inquiry are normally expected to meet their own expenses irrespective of the outcome. Costs will therefore be awarded only exceptionally, if the party against whom costs are sought is shown to have behaved unreasonably.

However, a public path creation order is considered to be analogous to a compulsory purchase order. If a person with an interest in the land objects to the order, and attends or is represented at the inquiry, an award of costs will normally be made to them if the order is not confirmed. Extinguishment and diversion orders made under the Highways Act 1980 may occasionally be analogous, depending on the circumstances.

The power to award costs following inquiries also applies to hearings, but not to orders determined by the written representations procedure. It also covers the situation in which an inquiry is arranged, but then cancelled, for example because of the last-minute withdrawal of the only objection.

Compensation

There is provision for compensation to be paid to anyone whose property interests can be shown to have been adversely affected by the coming into operation of any public path order made under the Highways Act 1980 (but not orders made under the Town and Country Planning Act 1990). An applicant for a diversion order can be required to meet the cost of any compensation which the authority become liable to pay if the order is confirmed, eg. if the path is diverted on

to someone else's land. Disputes about the level of compensation are decided separately, after a decision has been made on the merits of the order, by the Lands Tribunal.

No compensation is payable in respect of modification orders, as these simply record on the definitive map public rights that exist already.

Code of practice for the creation of new rights of way

A guide to the creation of new rights of way and the compensation that might be payable has been published jointly by the former Countryside Agency (now part of Natural England) and the Countryside Council for Wales (see p38).

10 Complaints procedures

Introduction

Once a decision has been made either to confirm or not to confirm an order, the only way that decision can be challenged is through an application to the High Court. As explained on p32, legal action of this sort can be very costly and should not be commenced without first seeking legal advice.

There are, though, several ways that a complaint about the way a particular case has been handled can be investigated. If an authority has decided that it does not wish to make an order, it is open to the authority to reconsider that decision at any time. With this one exception, however, it is not possible to overturn or reverse a decision that has been taken. Nor can any of the other bodies set out below discuss the merits of the authority's or Inspector's decision on a particular case, or question the merits of any order that has been made.

Local authority complaints procedures

Local authorities have complaints procedures, and use of these should be the first step for anyone who feels dissatisfied with the way in which the authority has dealt with an application or order.

Complaints to the Planning Inspectorate

As soon as an order is referred to the Planning Inspectorate, they write to everyone who is concerned indicating the name of the case officer dealing with the procedures. He or she is the first point of contact for any queries or complaints about the way the order is being handled. If it is felt that the case officer, or his or her senior colleagues, have not dealt with the matter satisfactorily, it can be raised with the Inspectorate's Complaints Officer.

If there are any complaints about an Inspector's decision letter or about the way an Inspector is conducting, or has conducted, an inquiry or hearing these should be put in writing to the Complaints Officer. If these concerns give rise to

an application for statutory or judicial review, then the time limits for those procedures will apply.

The Administrative Justice & Tribunals Council

If it is considered that there was something wrong with the basic procedure used by the Secretary of State or the Planning Inspectorate in processing the order, a complaint may be made to the Administrative Justice & Tribunals Council (p40). The Council will take the matter up if it comes within its scope.

Complaints of maladministration

If you consider that something a government department or agency has done - or has not done - amounts to maladministration, you can ask for the matter to be investigated by the Parliamentary and Health Service Ombudsman. References must be made to the Ombudsman through a Member of Parliament.

If you consider that something a local authority has done - or has not done - amounts to maladministration, you can ask for the matter to be investigated by the Local Government Ombudsman (the Commission for Local Administration). In this case the Ombudsman can be approached direct, but you should first give the local authority a chance to resolve the complaint itself.

The term 'maladministration' can include unreasonable delay, muddle, bias, failure to follow the correct procedures and decisions that are badly made, but neither Ombudsman can question a decision that has been made just because someone else disagrees with it. Booklets are available from the addresses on p40 explaining the procedures that are involved.

If you complain to an Ombudsman about a body without first making a complaint direct to the body, the Ombudsman's first step will be to refer the matter to the body concerned, so it is always advisable to make a complaint direct to the body in the first instance and then complain to the Ombudsman only if you feel that your complaint

has not been dealt with to your satisfaction by the body.

Complaints of failure by authority members to follow their code of conduct

Every member of a local authority now has to sign up to the authority's code of conduct, which must be consistent with nationally-prescribed rules of behaviour for authority members. Details of an authority's code can be obtained from the authority's monitoring officer.

The nationally-prescribed rules include provisions that members should:

- serve only the public interest;
- never improperly confer an advantage or disadvantage on any person;
- not place themselves in situations where their honesty and integrity may be questioned;
- not behave improperly and on all occasions avoid the appearance of such behaviour;
- make decisions on merit;
- be accountable to the public for their actions and the manner in which they carry out their responsibilities;
- be as open as possible about their actions and those of their authority, and be prepared to give reasons for those actions;
- uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them;
- do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law;
- promote and support these principles by leadership, and by example;
- act in a way that secures or preserves public confidence.

If you think that a member of an authority has failed to comply with the authority's code of conduct in dealing with a matter relating to rights of way a written complaint should be sent to the chief executive of the authority. If the authority's response is not satisfactory the matter can be reported to the Standards Board for England (see p40).

Definitions and references

11 Definitions

Definitions of additional terms often encountered in rights of way or countryside access can be found in the Glossary in the Natural England publication *Out in the Country*

Word or phrase	Definition
Bridleway	A public right of way for walkers and those on horseback or leading a horse, but not a way at the side of a road. Pedal cyclists also have a right of way on a bridleway, but must give way to walkers and horse-riders. A bridleway can run along a way where certain individuals have a right to drive other vehicles, such as a farm access drive.
Byway open to all traffic	A particular type of way shown on a definitive map. Although motorists are entitled to use them, the predominant use of byways open to all traffic is normally by walkers, horse-riders and pedal cyclists. A carriageway has to be used, or be likely to be used, mainly by walkers and horse-riders to be eligible to be added to the definitive map as a byway open to all traffic.
Creation order	An order made by a local authority to create a new footpath, bridleway or restricted byway.
Cut-off date	The date (1st January 2026 or any later date set by the Secretary of State) on which certain rights will be extinguished if not recorded on definitive maps by then.
Definitive map	The legal record of public rights of way (footpaths, bridleways, restricted byways, and byways open to all traffic). Warning - not all rights of way are yet shown on definitive maps, so a way not on the definitive map may still be a right of way. Also a way which is shown on the definitive map may not have all the public's rights yet recorded, eg. a way shown on the map as a footpath may really be a bridleway.
Definitive map modification order (DMMO)	An order made by a surveying authority to amend the definitive map and statement.
Definitive statement	A statement which accompanies the definitive map. Where it contains specific information about a route shown on the map, such as its position or width, that information is conclusive evidence as to, for example, the position or width of the right of way. The statement does not have priority over the definitive map, nor does the map have priority over the statement.
Diversion order	An order made by a local authority to divert a footpath, bridleway or restricted byway.
Extinguishment order	An order made by a local authority to close a footpath, bridleway or restricted byway.
Footpath	A public right of way for walkers but not at the side of a carriageway. A footpath can run along a way where certain individuals have a right to drive vehicles, such as a farm access drive.
Green lane	A descriptive term for a way. It is normally used where the way is bounded by hedges or stone walls, and where the surface is not, or does not appear to be, metalled or otherwise surfaced (sometimes there is an old surface under the grass or mud).
Highway	Any way over which the public have a right to pass and re-pass.

Word or phrase	Definition
Highway authority	The public authority that is responsible for maintaining highways within its area. These authorities are : • in London - the London borough councils; • elsewhere in England; - the county council if there is both a county and district council in the area; - otherwise, the unitary authority, which may be called either a county, district, borough or city council. Some of the powers of the highway authority may be delegated to other authorities (such as National Park authorities).
Local authority	These authorities are : • in London - the London borough councils; • elsewhere in England; - the county council if there is both a county and district council in the area; - otherwise, the unitary authority, which may be called either a county, district, borough or city council.
Local council	A parish or town council.
Mechanically-propelled vehicle	The Countryside and Rights of Way Act 2000 amended various pieces of legislation substituting 'mechanically-propelled vehicle' for 'motor vehicle' because the definition of 'motor vehicle' was felt to be too narrow (see 'motor vehicle'). A 'mechanically-propelled vehicle' is, broadly, one that has mechanical means of propulsion and the term covers motorised vehicles not intended or adapted to be used on public roads, as well as motor vehicles that are. Invalid carriages are mechanically-propelled vehicles but are specifically excluded from the application of certain road traffic legislation by virtue of section 20 of the Chronically Sick and Disabled Persons Act 1970
Motor vehicle	'Motor vehicle' is defined by section 185 of the Road Traffic Act 1988 as a mechanically-propelled vehicle intended or adapted for use on roads. As such, it was interpreted as excluding quad and scrambler bikes intended to be used 'off-road'. The term, as applied to rights of way legislation, has been amended by the Countryside and Rights of Way Act 2000 (see 'mechanically-propelled vehicle') and now includes these vehicles.
Planning Inspectorate	An executive agency of the government to which the Secretary of State normally delegates the decision-making on opposed orders.
Prescribed organisation	A voluntary organisation prescribed by regulations to receive copies of modification and public path orders and notices. See list (p28).
Public path	A footpath or a bridleway
Public path order	A collective term for creation, diversion and extinguishment orders.
Public right of way	legally the same as highway, with the main difference in meaning being that highway is used to refer to the physical feature and public right of way to the right to walk, ride or drive over it. The two terms are often used interchangeably, but in many cases public right of way is used to refer to those highways shown on definitive maps, (footpaths, bridleways, restricted byways, and byways open to all traffic).
Reclassification order	An order made by a surveying authority to reclassify a way shown in the definitive map and statement as a road used as a public path to either a footpath, bridleway or byway open to all traffic.
Relevant date	The date on which the definitive map or a subsequent modification or reclassification order provides conclusive evidence of the existence of public rights over a particular right of way.
Restricted byway	A public right of way for walkers, horse-riders and carriage-drivers and pedal cyclists. Many restricted byways were created by the reclassification in 2006 of ways previously recorded as roads used as public paths.

Word or phrase	Definition
Road used as public path (RUPP)	A particular type of way formerly shown on a definitive map. The test for adding a way to the definitive map as a RUPP (in the 1950s) was that its predominant use by the public was by walkers and horse-riders, even though it was not a footpath or bridleway. The term caused confusion all remaining RUPPs were reclassified as restricted byways in 2006.
Surveying authority	The public body responsible for preparing and keeping under continuous review the definitive map and statement of rights of way. They are the same councils that are highway authorities (see above).
Traffic authority	The public body that exercises traffic management powers and is responsible for making traffic regulation orders. They are the same councils that are highway authorities (see above).

The relevant duties of those councils that are highway, surveying and traffic authorities can be summarised as follows:

- to record public rights of way on definitive maps and statements and keep those maps and statements available for public inspection;
- to maintain those highways which are maintainable at public expense;
- to signpost and waymark public rights of way;
- to protect and assert the public's rights of passage over all highways and to keep them free from obstruction and to ensure that landowners fulfil their responsibilities to make good and re-define public rights of way after ploughing or other disturbance, and ensure they are kept free from any encroaching crops;
- to make traffic regulation orders to regulate traffic (including cyclists, horse-riders and walkers) on highways and other roads.

12 References

Acts, regulations and circulars

These can be obtained in printed form online via the TSO Online Bookshop (www.tso.co.uk/bookshop/bookstore.asp) or via the telephone order line 0870 600 5522.

All Acts of Parliament from 1987 onwards, and some from earlier years, are available on the Internet at www.opsi.gov.uk/acts.htm, but note that this site simply gives you the text of the Act as passed. It does not tell you whether or when the Act was brought into force, or if it has been subsequently amended or even repealed. The Statute Law Database at www.statutelaw.gov.uk gives details of legislation as subsequently amended.

Acts

Acts do not automatically come into force when they are enacted (receive Royal Assent), but normally have to be brought into operation by commencement orders made by Parliament. So, for example, some of the provisions in the Countryside and Rights of Way Act 2000 relating to rights of way still remained to be brought into force at the end of December 2007.

- Countryside and Rights of Way Act 2000
www.opsi.gov.uk/acts/acts2000a
This Act contains, in part II and Schedules 5 to 7, most of the changes to legislation referred to as forthcoming changes in this booklet.
- Highways Act 1980
This Act contains, in sections 26 and 118 to 121 and Schedules 2 and 6, the provisions relating to public path and rail crossing orders. Note: The Highways Act 1980 has been amended by several later Acts of Parliament. Important changes in respect of public path orders include those made under Schedule 16 of the Wildlife and Countryside Act 1981 (which amended section 119 and Schedule 6), sections 47-48 and Schedule 2 of the Transport and Works Act 1992 (which inserted provisions relating to rail crossing orders) and Schedule 6 of the Countryside and Rights of Way Act 2000 (which amended section 119 and inserted provisions relating to special diversion and extinguishment orders), the Clean Neighbourhoods and Environment Act 2005

(which inserted provisions relating to gating orders) and the Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006.

- Town and Country Planning Act 1990
www.opsi.gov.uk/acts/acts1990a
This contains, in section 257 and Schedule 14, the provisions relating to orders for rights of way which are affected by development.
- Natural Environment and Rural Communities Act 2006
www.opsi.gov.uk/acts/acts2006a
This Act contains, in section 66-70, provisions extinguishing rights for mechanically-propelled vehicles in certain cases, and other amendments to definitive map procedure.

Regulations

- Dedicated Highways (Registers under Section 31A of the Highways Act 1980) (England) Regulations 2007 SI 2007 No 2334
www.opsi.gov.uk/si/si2007/20072334.htm
These regulations set out the form and content of the registers that surveying authorities are required to keep of plans and declarations made by landowners in respect of admitted rights of way across their land and to protect themselves against future dedications.
- Highways Act 1980 (Gating Orders) (England) Regulations 2006 SI 2006 No 537
www.opsi.gov.uk/si/si2006/20060537.htm
These regulations prescribe the content and procedure for gating orders.
- Highways, Crime Prevention etc.(Special Extinguishment and Special Diversion Orders) Regulations 2003 SI 2003 No 1479
www.opsi.gov.uk/si/si2003/20031479.htm
These regulations prescribe the form of special diversion and extinguishment orders for the purposes of crime prevention and school security.
- Highways (SSSI Diversion Orders) (England) Regulations 2007 SI 2007 No 1494
www.opsi.gov.uk/si/si200714.htm
These regulations prescribe the form of diversion orders for rights of way across SSSIs (Sites of Special Scientific Interest) and associated notices.

- Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 [SI 1993 No. 407 as amended by SI 1996 No 1978]
www.opsi.gov.uk/si/si1993/Uksi_19930407_en_1.htm
as amended by
www.opsi.gov.uk/si/si1996/Uksi_19961978_en_1.htm
These regulations empower local authorities to charge applicants for public path orders.
- Public Path Orders Regulations 1993 [SI 1993 No. 11 as amended by SI 1995 No 451 and SI 2006 No 1177]
www.opsi.gov.uk/si/si1993/Uksi_19930011_en_1.htm
as amended by
www.opsi.gov.uk/si/si1995/Uksi_19950451_en_1.htm
and www.opsi.gov.uk/si/si2006/20061177.htm
These regulations prescribe the form of public path orders and associated notices.
- Public Rights of Way (Combined Orders) (England) Regulations 2008 SI 2008 No 442
www.opsi.gov.uk/si/si2008/pdf/ukxi_20080442_en.pdf
These regulations set out the types of orders for which surveying authorities may include provisions that also modify the definitive map and statement, and the content of such orders.
- Public Rights of Way (Register of Applications under section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005 SI 2005 No 2461
www.opsi.gov.uk/si/si2005/20052461.htm
These regulations set out the form and content of the registers that surveying authorities are required to keep of applications for definitive map modification orders.
- Rail Crossing Extinguishment and Diversion Orders Regulations 1993 [SI 1993 No. 9 as amended by SI 1995 No 451 and SI 2006 No 1177]
www.opsi.gov.uk/si/si1993/Uksi_19930011_en_1.htm
as amended by
www.opsi.gov.uk/si/si1995/Uksi_19950451_en_1.htm
and www.opsi.gov.uk/si/si2006/20061177.htm
These regulations prescribe the form of rail crossing orders and associated notices.
- Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006 SI 2006 No 1177
www.opsi.gov.uk/si/si2006/20061177.htm
These regulations made amendments to legislation so that it applied also to restricted byways.
- Rights of Way (Hearing and Inquiry Procedure) (England) Rules 2007 SI 2007 No 2008
www.opsi.gov.uk/si/si2007/20072008.htm

These rules set out the procedure and timetable for public inquiries or hearings into opposed definitive map modification and public path orders submitted to the Planning Inspectorate after 1st October 2007.

- Town and Country Planning (Public Path Orders) Regulations 1993 [SI 1993 No. 10 as amended by SI 1995 No 451 and SI 2006 No 1177]
www.opsi.gov.uk/si/si1993/Uksi_19930010_en_1.htm
as amended by
www.opsi.gov.uk/si/si1995/Uksi_19950451_en_1.htm
and www.opsi.gov.uk/si/si2006/20061177.htm
These regulations prescribe the form of orders for rights of way affected by development and associated notices.
- Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 [SI 1993 No 12 as amended by SI 1995 No 451 and SI 2006 No 1177]
www.opsi.gov.uk/si/si1993/Uksi_19930012_en_1.htm
as amended by
www.opsi.gov.uk/si/si1995/Uksi_19950451_en_1.htm
and www.opsi.gov.uk/si/si2006/20061177.htm
These regulations prescribe details of definitive maps and the form of modification orders and associated notices.

Circulars and guidance

- Defra Circular 1/08: Public rights of way
www.defra.gov.uk/wildlife-countryside/issues/public/circular.htm
This is a comprehensive circular giving guidance to local authorities on a wide range of matters relating to public rights of way, including definitive maps and changes to public rights of way and the related orders
 - Department of the Environment, Transport and the regions circular 04/2001: Countryside and Rights of Way Act 2000
www.defra.gov.uk/wildlife-countryside/cl/circular/index.htm
This circular gives guidance about the provisions in the Countryside and Rights of Way Act 2000.
- Defra has also produced the following guidance, which can be downloaded from its website at the addresses given or obtained from its Recreation and Access Team (see p40 for contact details):
- Combined Orders and the power to include modifications in other orders
www.defra.gov.uk/wildlife-countryside/issues/public/combined-orders.htm

- Guidance for National Park Authorities making Traffic Regulation Orders under section 22BB Road Traffic Regulation Act 1984
www.defra.gov.uk/wildlife-countryside/cl/mpv/index.htm#nppowers
- Non Statutory Guidance on the recording of widths on public path, rail crossing and definitive map modification orders
www.defra.gov.uk/wildlife-countryside/issues/public/non-stat-guid-width.pdf
- Part 6 of the Natural Environment and Rural Communities Act 2006 and Restricted Byways : A guide for local authorities, enforcement agencies, rights of way users and practitioners : 4th edition, November 2006
www.defra.gov.uk/wildlife-countryside/cl/nerco6.htm
- Register of definitive map modification order applications : Guidance for English surveying authorities to accompany Statutory Instrument 2005 No 2461
www.defra.gov.uk/wildlife-countryside/issues/public/index.htm
- Register of Highway Act Declarations, Statements and Maps Guidance for English Local Authorities to accompany Statutory Instrument No 2334
www.defra.gov.uk/wildlife-countryside/issues/public/index.htm

Other publications

Natural England publications

This booklet is one of a series of information booklets available from Natural England Publications.

Other titles include:

- Waymarking Public Rights of Way - CA 77.
- Out in the Country - CA 9. A detailed guide to your rights and responsibilities in the countryside, which includes a glossary of terms to do with rights of way and countryside access.
- Managing public access - CCP 450 (published with the National Farmers Union and Country Land and Business Association). Information for farmers and landowners on rights of way and public access.
- New rights, new responsibilities : What the new countryside access arrangements will mean to you - CA 65
- Drawing the boundaries : mapping and consultation for new countryside access rights - CA 66

The former Countryside Agency (now part of Natural England) has also published jointly with the Countryside Council for Wales a guide, Creation of new public rights of way: A code of practice for local highway authorities and landholders involved in negotiating compensation, available from www.iprow.co.uk/gpg/index.php/Creation_of_Public_Paths#Code_of_Practice

Planning Inspectorate publications

The Planning Inspectorate (see p40) has published Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England about the way it handles opposed definitive map modification and public path orders submitted after 1st October 2007. The guidance both explains and includes a copy of the rules for inquiries and hearings.

The Inspectorate has also published a series of Rights of Way Advice Notes and a set of Consistency Guidelines for definitive map modification orders.

All these publications are freely available from the Inspectorate or via its website:

www.planning-inspectorate.gov.uk/pins/appeals/rights_of_way/rights_way.htm

Rights of Way Review Committee Practice Guidance Notes

The Rights of Way Review Committee (see p41) brings together a wide range of bodies and organisations concerned with public rights of way. It is an informal, non-statutory committee set up to review matters relating to public rights of way with the aim of agreeing, by consensus, proposals for action.

The Committee has published the following Practice Guidance Notes (PGNs), all of which were revised in 2007 and are available from www.iprow.co.uk/gpg/index.php/RWRC_Practice_Guidance_Notes

PGN 1: Code of practice on consultation over changes to public rights of way

PGN 2: Deemed dedication of rights of way: section 31(6) of the Highways Act 1980

PGN 3: Minimising objections to definitive map modification and reclassification orders

PGN 4: Securing agreement to public path orders

PGN 5: Investigating the existence and status of public rights of way

PGN 6: Planning and Public Rights of Way

Other publications

Railway safety principles and guidance part 2, section E Guidance on level crossings (1996). Originally published by the Health and Safety Executive's Railway Inspectorate, and now available from the Office of Rail Regulation www.rail-reg.gov.uk/upload/pdf/rspg-2e-levxngs.pdf

Rights of way: A guide to law and practice, by John Riddall and John Trevelyan. Published by the Ramblers' Association and the Open Spaces Society. 4th edition, 2007. Contains the text of the Acts, regulations and circulars relevant to public path and definitive map modification orders as amended by subsequent legislation. Details at www.ramblers.co.uk/rightsofwaybook or from the Association or Society (see p41).

13 Useful addresses

Government departments and agencies

Administrative Justice & Tribunals Council
81 Chancery Lane, London WC2A 1BQ
Tel: 020 7855 5200
www.ajtc.gov.uk

Department of Environment, Food and Rural Affairs (Defra)
Recreation and Access Team, Zone 1/02, Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6EB
Tel: 0117 372 6274
www.defra.gov.uk/wildlife-countryside/index.htm

Local Government Ombudsman (Commission for Local Administration)
Tel: 0845 602 1983 - address varies according to the local authority concerned
www.lgo.org.uk/

National Rights of Way Casework Team
Government Office for the North East, Citygate, Gallowgate, Newcastle upon Tyne NE1 4WH
Tel: 0191 202 3595
email:
national.rightsofway.casework@gone.gsi.gov.uk
www.gos.gov.uk/gone/planning/planning_casework/highways/rights_of_way/

Natural England
1 East Parade, Sheffield S1 2ET Tel: 0114 241 8920
www.naturalengland.org.uk

Natural England Publications
Communis Print Management, Balliol Business Park West, Benton Lane, Newcastle upon Tyne NE12 8EW
Tel: 0800 694 0505
email: natural.England@communis.com
<http://naturalengland.communis.com/NaturalEnglandShop/>

Office of the Parliamentary and Health Service Ombudsman
Millbank Tower, Millbank, London SW1P 4QP
Tel: 0845 015 4033
www.ombudsman.org.uk

Planning Inspectorate
Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN
Tel: 0117 372 6372
www.planning-inspectorate.gov.uk

Standards Board for England
Fourth Floor, Griffin House, 40 Lever Street, Manchester M1 1BB
General enquiries tel: 0161 817 5300
email: enquiries@standardsboard.gov.uk
Complaints tel: 0800 107 2001
email: newcomplaints@standardsboard.gov.uk
www.standardsboard.gov.uk

Wales

For advice on the application of definitive map procedures in Wales, contact:
Countryside Council for Wales
Maes y Ffynnon, Ffordd Penrhos, Bangor Gwynedd LL57 2LQ
Enquiry line: 0845 1306 229
www.ccw.gov.uk

Welsh Assembly Government
Cathays Park, Cardiff CF10 3NQ
Tel: 029 2082 5111
www.wales.gov.uk

Voluntary organisations

Auto Cycle Union
Wood Street, Rugby, Warwickshire CV21 2XY
Tel: 01788 566400
www.acu.org.uk

British Driving Society
83 New Road, Helmingham, Stowmarket, Suffolk IP14 6EA
Tel: 01473 892001
www.britishdrivingsociety.co.uk

British Horse Society
Stoneleigh Deer Park, Kenilworth, Warwickshire CV8 2XZ
Tel: 0844 848 1666
www.bhs.org.uk

Byways and Bridleways Trust
PO Box 117, Newcastle upon Tyne NE3 5YT
www.bbtrust.org.uk

Chiltern Society
The White Hill Centre, White Hill, Chesham,
Bucks HP5 1AG
Tel: 01494 771250
www.chilternsociety.org.uk

Country Land and Business Association
16 Belgrave Square, London SW1X 8PQ.
Tel: 020 7235 0211
www.cla.org.uk

Cyclists Touring Club
Parklands, Railton Rd, Guildford, Surrey GU2 9JX
Tel: 0870 873 0060
www.ctc.org.uk

National Farmers Union
Agriculture House, Stoneleigh Park, Stoneleigh,
Warwickshire CV8 2TZ
Tel: 024 7685 8500
www.nfu.org.uk

Open Spaces Society
25A Bell Street, Henley-on-Thames, Oxon RG9 2BA.
Tel: 01491 573535
www.oss.org.uk

Peak and Northern Footpath Society
Taylor House, 23 Turncroft Lane, Offerton,
Stockport SK1 4AB
Tel: 0161 480 3565
www.peakandnorthern.org.uk

Ramblers' Association
2nd Floor, Camelford House,
87-90 Albert Embankment, London SE1 7TW
Tel: 020 7339 8500
www.ramblers.co.uk

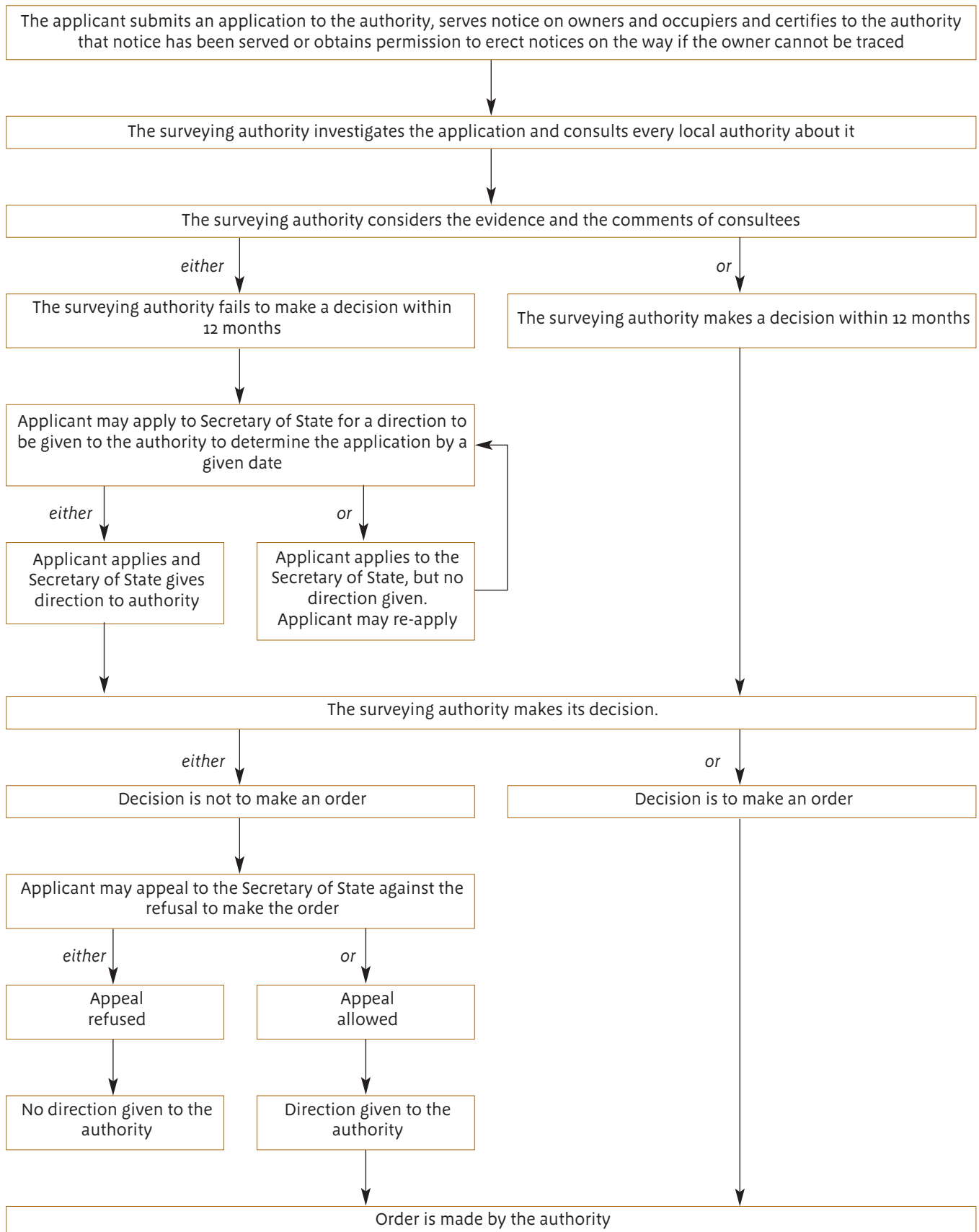
Rights of Way Review Committee
15 Lansdown Park, Bath BA1 5TG
email: suetoland@hotmail.com

The Countryside Code

- Leave gates and property as you find them
- Protect plants and animals, and take your litter home
- Keep dogs under close control
- Consider other people
- Be safe - plan ahead and follow any signs

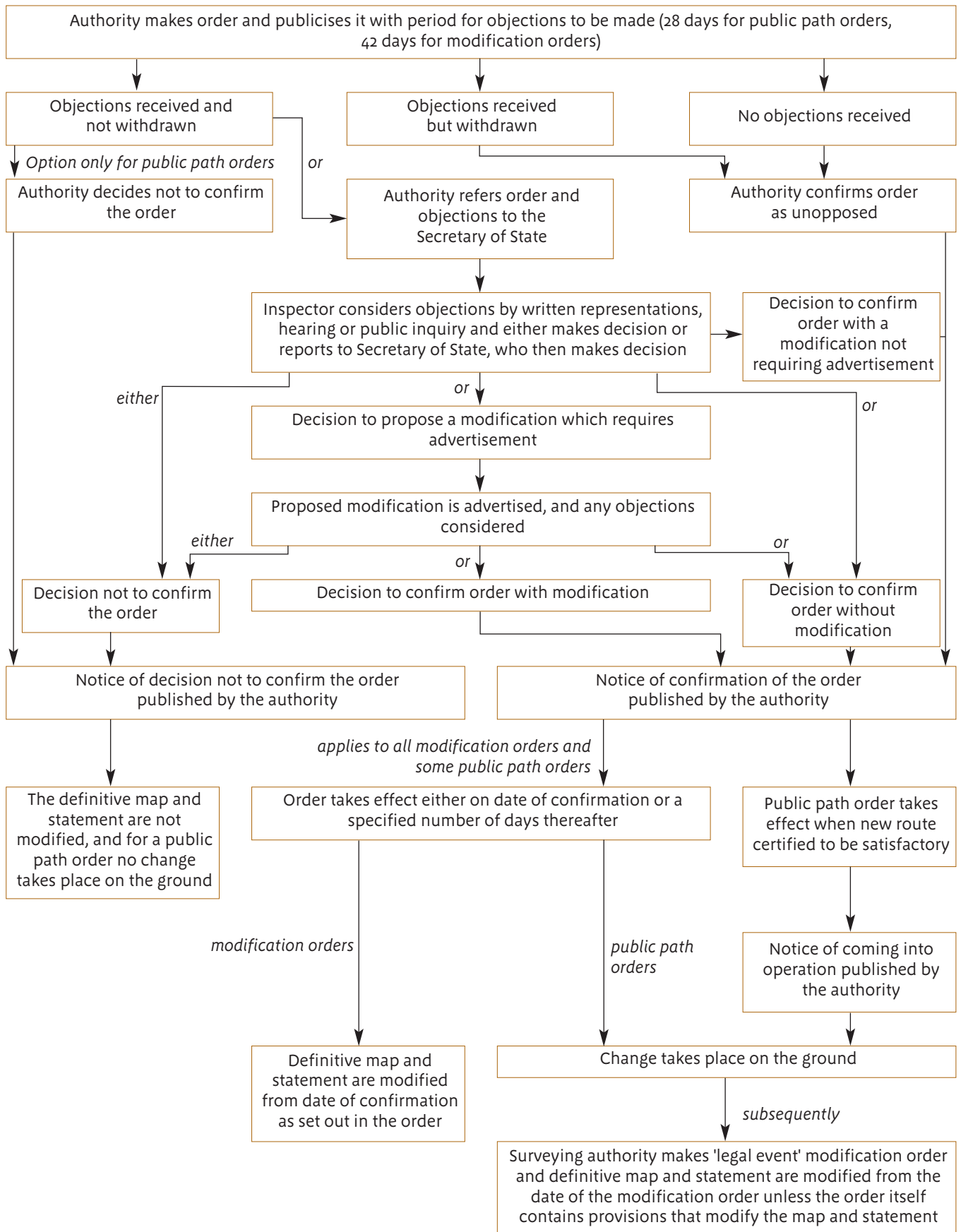
Flowchart:

Applications for modification orders



Flowchart:

Procedure for modification and public path orders





Natural England is here to conserve and enhance the natural environment, for its intrinsic value, the well-being and enjoyment of people and the economic prosperity that it brings.

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