

## KENT COUNTY COUNCIL

### GUIDANCE NOTES ON MAKING AN APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER

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These Guidance notes have been prepared and issued by Kent County Council to assist you in making applications for Definitive Map Modification Orders. These notes are intended as a Guide only and you are advised to refer also to Part III of The Wildlife and Countryside Act 1981 (in particular Section 53 and Schedule 14, copy attached at Appendix A) and the “The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993” SI 1993 No 12 as no responsibility can be accepted by Kent County Council for any errors or omissions in these notes.

#### Background

The Definitive Map and Statement is the legal record of public rights of way in Kent which proves conclusively, in law, the existence and status of a public right of way at a specified date, known as the Relevant Date. The public rights have legal protection and may only be changed or extinguished through a legal process.

The Definitive Map is accompanied by a Definitive Statement that lists all of the routes shown on the Map and includes a description for each entry. It can be viewed at Invicta House, County Hall, Maidstone or at your local District/Borough Council Offices. Parish Councils and main libraries should also hold a copy of the Definitive Map for their area.

#### The Definitive Map and Statement shows four categories of path:

- Footpath (FP)  
Use on foot only.
- Bridleway (BW)  
Use on foot, on horseback and leading a horse and pedal cycle.
- Byway Open to All Traffic (BOAT)  
Use on foot, on horseback and leading a horse and in or on vehicles, including motor vehicles and pedal cycles. Use must be shown to be mainly on foot and horseback.
- Restricted Byway (RB)  
Use on foot, horseback, pedal cycle, and non-motorised vehicles.

This legal record is a minimum record of rights that are known to exist. There are often cases where paths not recorded on the Definitive Map exist on the ground and have been openly used and enjoyed by the public for a considerable time. In such cases, there may be a basis for that route to be added to the legal record to protect those public rights that have been acquired.

Sometimes the legal record is inaccurate – a way recorded as a public footpath may have been used for 20 years or more as a public bridleway. Alternatively, evidence

may exist to show that a path recorded on the Definitive Map is not public or a route is shown on the wrong line or should be more precisely defined.

It is necessary to establish the facts through detailed documentary research and interviewing independent witnesses. When inaccuracies and errors do exist, changes to the Definitive Map and Statement can only be made through a legal process, namely a Definitive Map Modification Order (“DMMO”).

This pack contains all of the information you will require to submit an application for a DMMO and should be used for requests to add/delete paths, upgrade/downgrade paths on the legal record, or otherwise to change paths that are already recorded.

## **Making Your Application**

If you believe the Definitive Map and Statement to be incorrect you may apply for a modification Order, which if made and confirmed, will change the Definitive Map and Statement. You must have evidence to substantiate your claim. This may be documentary evidence and/or evidence of public use. Section 31 of the Highways Act 1980 states a 20-year period of use is required and this is calculated back from the point of challenge.

The following explains how to complete the forms and follows the requirements as laid down in the Wildlife and Countryside Act 1981.

### **Schedule 7**

This is the application form, which must be completed fully and accompanied with a map of the route. The description must be as detailed possible so it is clear to the Case Officer exactly what the application is applying for. The map must clearly show the right of way, which is being claimed. It is helpful if you show by shading or colouring which land belongs to each of the landowners you have notified.

### **Schedule 8 – to be served on the landowners and occupiers once your application has been submitted and formally accepted by the County Council**

You must by law, serve notice on the **landowners and occupiers** of the land covered by your application. The County Council would recommend that if you are uncertain as to who owns the land then you should complete a Land Registry Search. If having completed the search you are unable to trace the landowner(s)/occupier(s) then you must apply in writing to the Public Rights of Way Team for permission to post notices to the unknown landowner/occupier and this must be posted on site. Permission will be given if the County Council is satisfied that all reasonable attempts have been made to trace the landowner(s)/occupier(s). Notices must not be posted on site without permission from the County Council.

**N.B. – Notice must be served on all landowners as well as occupiers. Land Registry will assist with landowners but not with occupiers. Therefore if you are uncertain as to whether or not there are any occupiers of the land then you must apply in writing to post notices to the unknown landowners and occupiers. Failure to serve the necessary notices may prove fatal to your application.**

**Schedule 9 – to be submitted to the County Council once your application has been formally accepted – please see checklist below**

This is for you to confirm to the County Council that you have served notice on the landowner(s) and occupier(s) and provide their names and addresses. If you have been unable to trace the landowner/occupier and having sought permission from the County Council, have posted notices on site, this must be certified to the County Council including a copy of the notice and a map indicating the location of each notice. It is also advisable to take photographs of the notices as proof of posting.

**Initial User Evidence Form**

If applicable, this form should be copied and filled in by witnesses and signed and dated (see Appendix B for a copy of the form). A plan completed by the witness showing the route being claimed should also be submitted with each form.

**Please note when collecting user evidence that the information provided by witnesses may pass into the public domain during the processing of the application and therefore cannot be treated as confidential. It is important to inform all witnesses of this fact so that they are aware before providing personal details. Please make sure all witnesses read the “Important Notice” at the top of the initial user evidence form before completing it.**

**Documentary Evidence**

If applicable, copies of all documents must be submitted with the application, it is not enough to simply list the documents.

**What happens next?**

On receipt of a properly completed application, it will be registered, assigned a number and added to the schedule to await determination. You will be sent an acknowledgement detailing the reference number. If the application is incomplete you will be contacted to rectify this, before the claim can be registered.

Applications will generally be dealt with in Order of receipt; however, a backlog of applications is currently being dealt with

The Countryside Access Improvement Plan, Operational Management document (2013) sets out the County Council’s priorities for keeping the Definitive Map and Statement up to date and ensuring that the status and alignment of all PROW are correct in accordance with statutory duties by:-

- a) Investigating and determining all claims in accordance with the statement of priorities
- b) Investigating and determining anomalies in accordance with statement of priorities
- c) Processing applications to change PROW in accordance with policy and statement of priorities.

d) Ensuring all changes are covered by a formal Order

Definitive Map modification cases will normally be investigated in the order in which applications are received, except in any of the following circumstances, where a case may be investigated sooner:

- Where it will satisfy one or more of the relevant key principles set out in paragraphs 4.14 – 4.25 of the CAIP Operational Management document,
- Where the physical existence of the claimed route is threatened by development,
- Where investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated.

You are entitled to apply to the Secretary of State for the Environment, Food and Rural Affairs (DEFRA) if your application is not dealt with within 12 months of receipt. Although the Secretary of State can direct the County Council to determine the application within a given time, consideration will be given to the County Councils Statement of Priorities.

### **Processing the Application**

A Public Rights of Way Officer carries out detailed investigations. Each investigation involves consultation with landowners and occupiers, local councils and various user groups. Witnesses are interviewed and documentary research is carried out. When the investigation is complete the evidence is assessed on a balance of probabilities. A detailed report with a recommendation is then submitted to the Head of Rights of Way for consideration and determination. A copy of the Notice of Decision will be sent to you.

If there is sufficient evidence the County Council will make a DMMO in accordance with the procedures laid down in Schedule 15 of the Wildlife and Countryside Act 1981. The order must be advertised with 42 days opportunity for objections and representations. If there are objections or representations, which are subsequently not withdrawn, the Order and objections/representations must be despatched to the Planning Inspectorate for determination by an Inspector for the Secretary of State probably by way of a Public Inquiry. If the Inspector confirms the Order, the route is recorded on the Definitive Map.

If however the County Council considers there is insufficient evidence to make a DMMO you may appeal to the Planning Inspectorate within 28 days of receiving the notification. The Planning Inspectorate may either agree with the County Council or direct the County Council to make an Order. If the County Council is directed to make an Order and objections/representations are received resulting in a Public Inquiry, the County Council will normally take a neutral stance and it will rest on you as the applicant to make the case to the Inspector.

## **How We Handle Your Personal Data**

Kent County Council (KCC) collects, uses and is responsible for certain personal information about you. When we do so we are regulated under the General Data Protection Regulation which applies across the European Union (including in the United Kingdom) and we are responsible as ‘controller’ of that personal information for the purposes of those laws.

### **The personal information we collect and use**

#### **Information collected by us**

In the course of processing your application to amend the Definitive Map and Statement, we collect the following personal information:

- your name
- you contact details
- names and contact details of witnesses to support your application

### **How we use your personal information**

We use your personal information to process your application as per schedules 14 and 15 of section 53 of the Wildlife & Countryside Act 1981.

### **How long your personal data will be kept**

We will hold your personal information indefinitely as per the above legislation.

### **Reasons we can collect and use your personal information**

The lawful basis on which we collect and use your personal data is that ‘processing is necessary for compliance with a legal obligation’.

The provision of personal contact data is required from you to enable us to process your application, and as we have a statutory basis for collecting your personal data if you do not provide it, we are unable to consider your application.

### **Who we share your personal information with**

As per the legislation, we may be required to share your personal information with the Secretary of State and to make your application publicly available.

We will share personal information with law enforcement or other authorities if required by applicable law.

### **Your Rights**

Under the GDPR you have a number of rights which you can access free of charge which allow you to:

- Know what we are doing with your information and why we are doing it
- Ask to see what information we hold about you
- Ask us to correct any mistakes in the information we hold about you
- Object to direct marketing
- Make a complaint to the Information Commissioners Office

Depending on our reason for using your information you may also be entitled to:

- Ask us to delete information we hold about you

- Have your information transferred electronically to yourself or to another organisation
- Object to decisions being made that significantly affect you
- Object to how we are using your information
- Stop us using your information in certain ways

We will always seek to comply with your request however we may be required to hold or use your information to comply with legal duties. Please note: your request may delay or prevent us delivering a service to you.

For further information about your rights, including the circumstances in which they apply, see the guidance from the UK Information Commissioners Office (ICO) on individuals' rights under the General Data Protection Regulation.

### **Keeping your personal information secure**

We have appropriate security measures in place to prevent personal information from being accidentally lost, or used or accessed in an unauthorised way. We limit access to your personal information to those who have a genuine business need to know it. Those processing your information will do so only in an authorised manner and are subject to a duty of confidentiality.

We also have procedures in place to deal with any suspected data security breach. We will notify you and any applicable regulator of a suspected data security breach where we are legally required to do so.

### **Who to Contact**

Please contact the Information Resilience and Transparency Team at [data.protection@kent.gov.uk](mailto:data.protection@kent.gov.uk) to exercise any of your rights, or if you have a complaint about why your information has been collected, how it has been used or how long we have kept it for.

You can contact our Data Protection Officer, Benjamin Watts, directly at [dpo@kent.gov.uk](mailto:dpo@kent.gov.uk) or you can write to the Data Protection Officer, Sessions House, Maidstone, Kent ME14 1XQ.

The General Data Protection Regulation also gives you right to lodge a complaint with a supervisory authority. The supervisory authority in the UK is the Information Commissioner who may be contacted at <https://ico.org.uk/concerns> or telephone 0303 123 1113.

For further information visit <https://www.kent.gov.uk/about-the-council/about-the-website/privacy-statement>

## **CHECKLIST**

**Before submitting your application, please make sure the following documents have been included. This is to ensure that your application can be registered, assigned a number and added to the Schedule to await determination. Failure to include any of the necessary documents will delay your application.**

- Schedule 7 – Application Form.
- A list of the documents/statements that you have included with your application.
- A map to the scale of at least 1:25000 showing the way or ways which are the subject of the application.
- If applicable, user evidence questionnaires and maps signed and dated by the witness
- If applicable, documentary evidence which is clearly labelled with the name of the document and date (if known). It is not sufficient to simply list the documents, copies must be provided.

**Once you have submitted your application and it has been formally accepted, assigned a reference and added to the Schedule, please serve Schedule 8 on the landowners and occupiers and send the following to the County Council: -**

- Schedule 9 – Certificate of Service of Notice of Application on landowners/occupiers.
- If you have been unable to trace landowners/occupiers :
  - A copy of the Notice and Map showing the location of notices.
  - A copy of the letter from the County Council authorising the notices.

Please send the application to:

**PROW & Access Service  
Invicta House  
County Hall  
Maidstone  
Kent, ME14 1XX**

**SCHEDULE 7**

**APPLICATION FOR MODIFICATION ORDER**

**WILDLIFE AND COUNTRYSIDE ACT 1981**

**THE KENT COUNTY COUNCIL  
DEFINITIVE MAP AND STATEMENT**

To Mrs L Wilkins  
of PROW & Access Service  
Kent County Council  
Invicta House  
County Hall  
Maidstone, Kent ME14 1XX

I/We *[Name of applicant(s)]*  
of *[Address of applicant(s)]*

hereby apply for an Order under Section 53(2) of The Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by

(deleting the [footpath] [bridleway] [restricted byway] [byway open to all traffic]  
from ..... to .....)

(adding the [footpath] [bridleway] [restricted byway] [byway open to all traffic]  
from ..... to .....)

(upgrading] [downgrading] to a [footpath] [bridleway] [restricted byway] [byway open to all traffic] the [footpath] [bridleway] [restricted byway] [byway open to all traffic]  
from ..... to .....)

([varying] [adding to] the particulars relating to the [footpath] [bridleway] [restricted byway] [byway open to all traffic]  
from ..... to ..... by providing that  
.....)

I/We attach copies of the documentary evidence (including statements of witnesses) in support of this application. Please attach on a separate sheet a list of documents/statements.

DATED this ..... day of ..... 201

.....  
*Signed*

.....  
*[on behalf of*



SCHEDULE 8

NOTICE OF APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

THE KENT COUNTY COUNCIL  
DEFINITIVE MAP AND STATEMENT

To [Owners, Occupiers]  
of land affected by the Order

I/We [Name of applicant(s)]

of [Address of applicant(s)]

hereby give notice that on the ..... day of ..... 201

I/We [Name of applicant(s)] made application to Kent County Council that the Definitive Map and Statement for the area be modified by:

(deleting the [footpath] [bridleway] [restricted byway] [byway open to all traffic]  
from ..... to .....)

(adding the [footpath] [bridleway] [restricted byway] [byway open to all traffic]  
from ..... to .....)

(upgrading] [downgrading] to a [footpath] [bridleway] [restricted byway] [byway open to all traffic] the [footpath] [bridleway] [restricted byway] [byway open to all traffic]  
from ..... to .....)

([varying] [adding to] the particulars relating to the [footpath] [bridleway] [restricted byway] [byway open to all traffic]  
from ..... to ..... by providing that  
.....)

DATED this ..... day of ..... 201

.....  
*Signed*

.....  
*[on behalf of]*

***[This notice must be served on every owner and occupier of any land to which the application relates, in accordance with paragraph 2 of schedule 14 to The Wildlife and Countryside Act 1981]***

**SCHEDULE 9**  
**CERTIFICATE OF SERVICE OF**  
**NOTICE OF APPLICATION FOR MODIFICATION ORDER**  
**WILDLIFE AND COUNTRYSIDE ACT 1981**  
**THE KENT COUNTY COUNCIL**  
**DEFINITIVE MAP AND STATEMENT**

To Mrs L Wilkins  
of PROW & Access Service  
Kent County Council  
Invicta House  
County Hall  
Maidstone  
Kent ME14 1XX

I/We *[Name of applicant(s)]*  
of *[Address of applicant(s)]*

HEREBY CERTIFY that the requirements of paragraph 2 of schedule 14 to The Wildlife and Countryside Act 1981 have been complied with.

DATED this ..... day of ..... 201

.....  
*Signed*

.....  
*[on behalf of]*

**Please list names and addresses of all owners and/or occupiers notified.**

## Wildlife and Countryside Act 1981

### PART III

#### PUBLIC RIGHTS OF WAY

##### Ascertainment of public rights of way

**Duty to keep  
definitive map  
and statement  
under  
continuous  
review.**

53. – (1) In this Part “definitive map and statement” in relation to any area, means subject to section 57(3), -
- (a) the latest revised map and statement prepared in definitive form for that area under section 33 of the 1949 Act; or
  - (b) where no such map and statement have been so prepared, the original definitive map and statement prepared for that area under section 32 of that Act; or
  - (c) where no such map and statement have been so prepared, the map and statement prepared for that area under section 55(3).
- (2) As regards every definitive map and statement, the surveying authority shall -
- (a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and
  - (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
- (3) The events referred to in subsection (2) are as follows –
- (a) the coming into operation of any enactment or instrument, or any other event, whereby –
    - (i) a highway shown or required to be shown in the map and statement has been authorised to be

stopped up, diverted, widened or extended;

(ii) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or

(iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path;

(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path;

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies;

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

(4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to -

(a) the position and width of any public path or byway open to all traffic which is or is to be shown on the map; and

(b) any limitations or conditions affecting the public right of way thereover.

(5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling with

paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.

- (6) Orders under subsection (2) which make only such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling within paragraph (a) of subsection (3) shall take effect on their being made; and the provisions of Schedule 15 shall have effect as to the making, validity and date of coming into operation of other orders under subsection (2).

## **SCHEDULE 14**

## **Section 53**

### **APPLICATIONS FOR CERTAIN ORDERS UNDER PART III**

#### *Form of applications*

1. An application shall be made in the prescribed form and shall be accompanied by -
  - (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
  - (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.
2. - (1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates.
  - (2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be serviced on him by sub-paragraph (1) may be served by addressing it to him by the description “owner” or “occupier” of the land (describing it) and by affixing it to some conspicuous object or objects on the land.
  - (3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.
  - (4) Every notice or certificate under this paragraph shall be in the prescribed form.

#### *Determination by authority*

- 3.-(1) As soon as reasonably practicable after receiving a

certificate under paragraph 2(3), the authority shall –

- (a) investigate the matters stated in the application; and
- (b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the order to which the application relates.

(2) If the authority have not determined the application within twelve months of their receiving a certificate under paragraph 2(3), then, on the applicant making representations to the Secretary of State, the Secretary of State may, after consulting with the authority, direct the authority to determine the application before the expiration of such period as may be specified in the direction.

(3) As soon as practicable after determining the application, the authority shall give notice of their decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1).

#### ***Appeal against a decision not to make an order***

4.- (1) Where the authority decide not to make an order, the applicant may, at any time within 28 days after service on him of notice of the decision, serve notice of appeal against that decision on the Secretary of State and the authority.

(2) If on considering the appeal the Secretary of State considers that an order should be made, he shall give to the authority such directions as appear to him necessary for the purpose.

#### ***Interpretation***

5. – (1) In this Schedule –

“application” means an application under section 53(5);

“local authority” means a district council, the Greater London Council, a parish or community council or the parish meeting of a parish not having a separate parish council;

“prescribed” means prescribed by regulations made by the Secretary of State.

(2) Regulations under this Schedule shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

