

Information, Guidance and Application Form to Divert a Public Right of Way

Highways Act 1980 Section 119

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Introduction

Public rights of way are recorded on the Definitive Map and Statement. This is the legal document which indicates the route and status of all registered public rights of way. The information shown on the Definitive Map and Statement should reflect the route as it appears on the ground.

If someone (usually the landowner) wishes to alter the alignment of a public right of way, they must first apply for a public path diversion order.

This information pack includes notes which explain how to make an application to divert a public right of way, and the necessary application forms.

These notes and application forms cannot be used to apply to rectify an alleged error on the Definitive Map and Statement. This requires a completely different legal order process, called a Definitive Map Modification Order.

Explanatory Notes

1. There are four categories of public rights of way:
 - a) Footpaths – right on foot only.
 - b) Bridleways – right on foot, horseback or pedal cycle.
 - c) Restricted Byways – right on foot, horseback, pedal cycle or with non-mechanically propelled vehicles e.g. horse drawn vehicles.
 - d) Byway Open to All Traffic (BOAT) – right on foot, horseback, pedal cycle or vehicles (including motorised vehicles), but are of a character that are mainly routes used as footpaths or bridleways.

2. Once Public Rights have been established they continue to exist forever unless they are changed by a formal legal process. The public's right to use a way does not cease to exist if the way is not used or visible on the ground, and lack of use does not negate the obligation to keep a path open and available for use.

3. The Definitive Map and Statement provides conclusive evidence of the existence and status of any public rights of way shown on it. This conclusive status is, however, without prejudice to the possible existence of other unrecorded public rights. Changes to the alignment of paths can only be secured using Public Path Orders. Alterations to the Definitive Map require separate Definitive Map Modification Orders.
4. A public right of way cannot be diverted on to another existing public right of way or highway as this would effectively result in the extinguishment of the path. The diverted route should be on an alignment that the public do not already pass and repass.
5. There is no guarantee that an application to divert a public right of way will be successful. The diversion process can take approximately 12 months, but will be longer if more information is required or objections to the Order are received and not withdrawn. Throughout this time the original line of the path should remain fully open and available for public use.
6. As Public Path Orders are a discretionary power for the Council, there is no formal right to appeal to the Council's decision.

Legal Tests

7. Section 119 of the Highways Act 1980 provides that a Local Authority may promote a public path diversion order if it is satisfied that the proposal is expedient in the interests of the owner, lessee or occupier of the land, and/or the public.
8. Such an Order must not alter the termination point of a path:
 - a) if that point is not on another highway (e.g. a viewpoint), or
 - b) other than onto another point on the same highway, or onto a highway connected to it, and which is substantially as convenient to the public.

9. The tests for confirmation of an Order, which can reasonably be considered at the same time as those for making the Order, in addition to those set out above, are that the alternative route must not be substantially less convenient to the public having regard to the effect which:
 - a) the diversion would have on public enjoyment of the path as a whole,
 - b) the diversion would have as respects other land served by the path, and,
 - c) any new public path created by the order would have as respects the land over which it is created.

Process

10. This application will assist the Council to decide whether or not to make a Public Path Diversion Order. It must however be stressed that even if the Council agrees to make an Order, the final decision whether the order is confirmed may, under certain circumstances rest with the Secretary of State.
11. After receipt of the application, the Council's Public Rights of Way Officer will inspect the current path, and survey the proposed new route. A report will then be prepared to assist the Director of Investment and Development in deciding whether or not to make the requested Order.
12. If the application is refused, the applicant will be advised of this and the reasons why. There is no right of appeal against such a decision.
13. If the application is approved a Public Path Diversion Order will be drafted and sealed (made) by the Council.
14. Notices will then be advertised on site for four weeks, as well as in the local press. All interested parties, such as statutory consultees and user groups will also be sent a copy of the Order and Notice.
15. At the end of the objection period and if no objections have been received the Council may confirm the order. If objections are received the Council may;
 - a) decide not to confirm the Order,

- b) seek withdrawal of objections, or
- c) submit the Order with objections to the Secretary of State for confirmation.

In cases where the Order is submitted to the Secretary of State, the decision as to whether to confirm the Order would be determined either by written representations, at a hearing or at an inquiry.

- 16. If confirmed, the Order is then advertised again for four weeks on site, and in the local press etc.
- 17. The original path will only be extinguished, and the new path created once the conditions set out in the Order have been complied with. The Order may state that it will only come into effect once the Council has certified that those conditions have been met. The certification will have to be advertised in the local newspaper before the proposed route becomes the public right of way and the original route is extinguished.
- 18. This process can take between 6 - 12 months, but will be longer if more information is required or objections are received to the Order.

Charges

- 19. The application cost is the amount that is likely to be incurred by the Council in making the Order. As a guide the approximate costs will be in the region of £3,500. An opposed Order (or an unopposed Order if the proposal is complex) can exceed this figure. The costs illustrated are in respect of an Order to divert one path. Additional costs will be incurred for each additional path to be diverted within one Order.
- 20. An application can be withdrawn at any stage by the applicant. However, the applicant will be liable for any cost incurred up to the point when the Council receives notification of the withdrawal. The costs are also payable if the Council abandons the Order making process because it believes an Order cannot reasonably be made or, once made, is incapable of confirmation.

21. The costs recovered are based on the costs incurred by the Council in processing a legal Order on behalf of a third party. The charges include the cost of stationery, postage, Land Registry searches and materials where these are necessary.
22. Newspaper advertising costs are also recovered. Two adverts are required although an additional newspaper advert may be required if the diversion is to be certified.
23. Additional charges will be incurred by the applicant in the following circumstances if;
- a) the applicant changes their mind about the proposal,
 - b) the proposal is amended in light of the consultation responses, or
 - c) additional letters, emails, telephone calls, site visits or meetings are required.
24. If more than one Order is necessary then applicants will be advised of the additional cost.
25. Officers will make every effort to minimise unnecessary costs for the applicant, and will advise the applicant on the realistic chances of success. Applicants should be aware that costs are not refundable should an Order fail to be confirmed.
26. The Council will refund costs if the authority decides not to confirm an unopposed Order.
27. No charges will be made for re-making an Order due to the sole reason that the original Order contains any technical error rendering it incapable of confirmation.

28. If an Order is submitted to the Secretary of State for confirmation the applicant will incur no further charges from this stage in the process.

Obstructed Paths

29. The obstruction of a public right of way may, in many instances, constitute a criminal offence. Before considering an application to divert a public right of way the Council will usually expect the existing route to be fully open and available for use, and for it to remain so until such a time as any Order is confirmed. In some instances the Council may consider the diversion of a path that is obstructed, however the existence of the obstructions will not be taken into account as part of the assessment against the criteria.

30. Where a public right of way is obstructed there is a greater chance that objections to any application will be received, which in turn may substantially reduce the chances of the application/order succeeding.

Guidance Notes – Making an Application

It is recommended that the following steps are taken when preparing an application to divert a public right of way.

- Prepare a map (ideally based on a current or recent Ordnance Survey map), preferably at a scale of not less than 1:2500 of the entire area involved. This will be the application map.
- Examine the Definitive Map and Statement held by the Highway Authority to ascertain what public rights of way are already recorded over the land, and their precise routes. Extracts from the Definitive Map can be obtained, on request, from the Public Rights of Way Officer. A charge will be made for this service.
- Accurately mark up on the application map the existing route and proposed new route of the public right of way using a black dashed line.
- Carefully mark up on the application map the precise route of the section of the public right of way you wish to divert using a solid black line.
- Annotate the application map to indicate any existing and proposed new features, such as gates, stiles, etc. on both routes.
- Mark on the application map (or a separate map if necessary) the extent of your land ownership/occupancy in relation to the path concerned.
- Mark on the application map (or a separate map if necessary) the extent of the land ownership of others, where necessary (if separate to the application map).
- Complete and submit the application form with the necessary maps to:
The Public Rights of Way Officer
Investment and Growth Directorate
Newcastle City Council
10th Floor
Civic Centre
Barras Bridge
Newcastle upon Tyne
NE1 1QH

A copy of the application should be kept for your records and future reference.

If you have any queries, please contact the Public Rights of Way Officer on 0191 277 1184 or email: pro@newcastle.gov.uk

Application for a Public Path Diversion Order s119 Highways Act 1980

1. Name of applicant.....
Address.....

Tel. (work)Tel. (home)Tel. (mobile).....

I/We* (*delete as necessary) hereby apply for a diversion order in respect of public right of way reference number

at

FromOS grid ref

ToOS grid ref

under section 119 of the Highways Act 1980 as shown on the attached application map and undertake, if the City Council agrees to make the order for the diversion of the path, to carry out such work on the diverted route of the path as may be required to bring the path into a fit condition for public use at such time as the diversion order can be confirmed.

Signed Date

Provide full details below of any agent or solicitor (if any) acting on behalf of the applicant. It should be made clear about who is to be served with any notices and who is authorised to carry out negotiations on behalf of the landowner(s).

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2. Is the right of way open and available for use at all times by members of the public? If not give details of any obstructions or impediments.....

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3. Landowner

Name.....

Address.....

Lessee/tenant

Name.....

Address.....

Occupier

Name.....

Address.....

Please give details of any other person(s) having a legal interest in the land for example a mortgagee, owners of mineral rights, persons having an easement over the land.

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Has the written consent of all such person(s) been obtained?

Yes / No* (*delete as necessary)

The consents must accompany this application.

4. Reasons for the diversion

Section 119 of the Highways Act 1980, as amended by Schedule 16 para. 5 of the Wildlife and Countryside Act 1981, permits diversions of public footpaths, bridleways and restricted byways on the grounds that it is expedient in the interests of (i) the owner, lessee or occupier and/or (ii) the public. Please indicate whether this application serves the interests of (i) and/or (ii) and give specific reasons why.

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What effect will the diversion have on the convenience and enjoyment of the path by the public?

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5. The proposed new route of the path.

General description of new path

Width

From OS grid ref.....

To OS grid ref

Position and type of limitations.....
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6. Landowner

Name.....

Address.....

Lessee/tenant

Name.....

Address.....

Occupier

Name.....

Address.....

Please give details of any person(s) having a legal interest in the land over which the right of way is to be diverted for example a mortgagee, owners of mineral rights, persons having an easement over the land.

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Has the written consent of all such person(s) been obtained?

Yes / No* (*delete as necessary)

The consents must accompany this application.

7. General

State what work (including the construction of stiles, gates and fences) will be necessary to put the proposed route into a fit condition for use by the public and how long this should take.

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Give full details including dimensions and type of construction including current state of repair of any bridges that exist or are necessary on the route of the proposed diversion.

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You may be required to enter into an agreement with the Council for you and your successors to maintain such bridges to the satisfaction of the Council.

The new path will be signposted and/or waymarked to the extent deemed necessary by the Council.

8. Statement

I hereby undertake to defray any compensation which becomes payable in consequence of the coming into operation of the order.

I undertake with Newcastle City Council to meet in full the requirements of any statutory undertaker in respect of any apparatus which may be over, in or under the right of way in respect of which I am making this application. I understand that the consent of the statutory undertakers is required before the order can be confirmed by the Council and that their consent may be conditional on my carrying out works to protect the statutory undertakers' apparatus and/or rerouting it. (The Council will consult with the statutory undertakers on your behalf).

I understand that unless agreed otherwise in writing with Newcastle City Council, I (as the applicant), will be invoiced for the charges for this application and that I will be responsible for paying any compensation that becomes payable under Highways Act 1980 section 28. I understand it is my/our* (*delete as necessary) responsibility to recover costs from other parties if the costs are to be shared with others.

I understand that no authority for the diversion is conferred unless and until an Order has been made and confirmed, and Notice of its making and confirmation and in some cases certification has been published. Any preliminary obstruction of or interference with the existing route may not only be unlawful, but may make it impossible to proceed with the making of the Order.

I have read and understand this application form and the notes for applicants and make my application acknowledging the conditions specified therein.

Signed.....Date.....

When submitting your application, please tick the boxes below to show what documents have been attached;

- Completed application form.
- Application map signed and dated showing the existing and proposed routes.
- Map showing the extent of my/our land ownership/occupancy in relation to the path(s) concerned (if separate to the application map).
- Map showing information of the land ownership of others, where necessary (if separate to the application map).
- Written consent of any persons having interest in the land whom are not the applicants.
- Purchase order to cover the Council's costs of making the Order, or a cheque for the required amount (bank transfers are also possible).

Please return the completed application form to:

The Public Rights of Way Officer
Investment and Growth Directorate
Newcastle City Council
10th Floor
Civic Centre
Barras Bridge
Newcastle upon Tyne
NE1 1QH