

Rights of Way Circular (1/08)

Guidance for Local Authorities



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This document is also available on the Defra website at
<http://www.defra.gov.uk/wildlife-countryside/issues/public/index.htm>

Published by the Department for Environment, Food and Rural Affairs

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1. Introduction

1.1 This circular gives advice to local authorities on recording, managing and maintaining, protecting and changing public rights of way. It replaces previous advice and guidance in circulars: 2/93, 3/93, 17/90, 18/90, 32/81, which are now no longer valid.

1.2 England's extensive network of public rights of way is a unique and valuable resource, which provides the opportunity to experience the immense variety of English landscape and the settlements within it. Rights of way are both a significant part of our heritage and a major recreational and transport resource. They enable people to get away from roads used mainly by motor vehicles and enjoy the beauty and tranquillity of large parts of the countryside to which they would not otherwise have access. Rights of way provide for various forms of sustainable transport and can play a significant part in reducing traffic congestion and harmful emissions. They are becoming more important as increases in the volume and speed of traffic are turning many once-quiet country roads into unpleasant and sometimes dangerous places for cyclists, equestrians and walkers.

1.3 In many areas, rights of way help to boost tourism and contribute to rural economies. They can also provide a convenient means of travelling, particularly for short journeys, in both rural and urban areas. They are important in the daily lives of many people who use them for fresh air and exercise on bicycle, foot or horse, to walk the dog, to improve their fitness, or to visit local shops and other facilities. Local authorities should regard public rights of way as an integral part of the complex of recreational and transport facilities within their area.

1.4 This advice and guidance sets out Defra's policy on public rights of way and its view of the law. It does not take the place of the legislation, but seeks to give an overview of it within a policy context.

Further information

1.5 Throughout this guidance, references are made to other guidance and publications and, where these are available online, hyperlinks are provided. A list of these sources of information is set out in Annex B.

Local authority resourcing

1.6 The provisions described in this circular do not involve additional local authority manpower or increased expenditure. Funding for rights of way functions, including additional burdens imposed through the Countryside and Rights of Way Act 2000, is provided through the revenue support grant. Authorities should ensure that sufficient resources are devoted to meeting their statutory duties with regard to the protection and recording of public rights of way, and that the rights of way network is in a fit condition for those who wish to use it.

Interpretation

Acts

The 1968 Act means the Countryside Act 1968

The 1980 Act means the Highways Act 1980

The 1981 Act means the Wildlife and Countryside Act 1981

The 1990 Act means the Town and Country Planning Act 1990

The 2000 Act means the Countryside and Rights of Way Act 2000

The 2006 Act means the Natural Environment and Rural Communities Act 2006

Responsible bodies

Surveying authority: Where there are two tiers of authority, the county council is the surveying authority. Unitary authorities are the surveying authorities for their areas. Surveying authorities are responsible for the definitive map and statement.

Local highway authority: Where there are two tiers of authority, the county council is the local highway authority. Unitary authorities are the local highway authorities for their areas. Broadly, local highway authorities are responsible for the management and maintenance of the rights of way network.

Local planning authority: In National Parks, the National Park authority is the local planning authority. Elsewhere, where there are two tiers of authority, the district council is the local planning authority, and unitary authorities are the local planning authorities for their areas. Local planning authorities are responsible, amongst other things, for development control.

The Secretary of State for Environment, Food and Rural Affairs determines orders under the Highways Act 1980, Wildlife and Countryside Act 1981 and Town and Country Planning Act 1990 to which there are representations or objections. Decisions are normally taken by inspectors employed by the Planning Inspectorate although the Secretary of State can determine orders himself. Orders made under other acts, such as the Acquisition of Land Act 1981, or the Housing Act 1985 will require authorisation or confirmation by the Secretary of State even where there are no representations or objections.

Parish Council includes Town Council and parish meeting.

2. Information about the network

2.1 Local authorities should aim to provide the public with information on the full range of choices available for enjoying the rights of way network. Information should be accessible, comprehensive and well promoted; it should be a key element in rights of way improvement plans. Publicity also provides an opportunity to promote understanding of the countryside and of environmental concerns.

Definitive maps and statements

2.2 Definitive maps and statements are documentary records of public rights of way. They indicate where the public may lawfully walk, ride or drive. They are conclusive evidence at the relevant date of the existence of the highways of the description shown and of the rights existing over those highways. Because there may be other public rights of way which are not recorded in the definitive map and statement, the evidential effect of the map is without prejudice to whether the public has at the relevant date any right of way other than the rights recorded. This proviso protects other rights, where they exist, against the conclusive evidential effect of the definitive map.

2.3 Authorities must make copies of their definitive map and statement and modification orders available for public inspection at one or more places within each district in their area, usually at the offices of the district council or county council, and within each parish where there are offices or other places where the public can inspect them, with a small charge being made if necessary. Authorities are required to keep at least one copy of previous maps and statements together with the orders modifying them available for public inspection. Authorities may also make working copies of their definitive map available for public inspection. Authorities are also required to bring to the attention of the public the fact that copies of definitive maps and statements and orders are available for inspection.

Registers

2.4 Local Authorities are required, under various provisions in Schedule 5 and 6 of the 2000 Act, to establish three registers.

2.5 Section 53B of the Wildlife and Countryside Act 1981, introduced by paragraph 2 of Schedule 5 to the 2000 Act, requires authorities to keep a register of applications for definitive map modification orders. The statutory requirements for registers are set out in regulations, but authorities need not be constrained by the regulations, if they wish to record additional information, they are encouraged to do so. Further information and guidance from Defra can be accessed through the following link -

www.defra.gov.uk/wildlife-countryside/issues/public/index.htm

2.6 Section 31A of the Highways Act, introduced by schedule 6, paragraph 4 of the 2000 Act, requires authorities to set up a register containing information with respect to declarations lodged and maps and statements deposited under section

31(6) of the 1980 Act. Such declarations and deposits enable landowners to formally acknowledge the rights of way across their land, and in doing so, create a presumption that they have no intention to dedicate any further routes across their land. Further information and guidance can be accessed through the following link – www.defra.gov.uk/wildlife-countryside/issues/public/index.htm

2.7 Section 121B of the 1980 Act requires authorities to set up a register of applications by owners, lessees or occupiers of any land used for agriculture, forestry or the breeding or keeping of horses for public path extinguishment and diversion orders or by proprietors of schools for special extinguishment or diversion orders. The regulations relating to this register will be incorporated into the ‘right to apply’ legislative package, which is yet to be implemented (see paragraph 5.23).

Finding the way on the ground

2.8 Ordnance Survey maps include public rights of way and so are important tools for the public in using public rights of way. It is in everyone’s interest that these maps reflect accurately the public’s rights.

2.9 Signs are of considerable benefit to users and landowners. They enable people to use the local network with confidence and certainty. Signs along ways give people certainty about the route that they are following and help to prevent trespass.

2.10 Local highway authorities are responsible for erecting and maintaining way marks, fingerposts, waymarks and other signs. Signs must conform to the Department for Transport regulations¹. Section 27 of the 1968 Act requires authorities to signpost footpaths, bridleways, restricted byways and byways open to all traffic where they leave metalled roads and where it is considered necessary to assist anyone unfamiliar with the locality to follow the line of the way. Authorities need not erect signposts at the junction of a way with a metalled road where the parish council agrees that it is not necessary. Authorities can in certain circumstances also place signs along ways but they must first consult the owner or occupier of the land crossed by the right of way and obtain their consent if the sign is to be placed on their property.

The Duty for Highway Authorities to provide signposts is found in section 27 of the Countryside Act 1968. In particular section 27(2) provides that:

(2) Subject to subsection (3) below, at every point where a footpath, bridleway, restricted byway leaves a metalled road the highway authority shall in exercise of their power under subsection (1) above erect and maintain a signpost.

(a) indicating that the footpath, bridleway, restricted byway or byway is a public footpath, bridleway, restricted byway or byway, and

¹ Traffic Signs Regulations and General Directions 1994

(b) showing, so far as the highway authority consider convenient and appropriate , where the footway, bridleway, restricted byway or byway leads, and the distance to any place or places named on the signpost.

3. Liaising with the public

Local access forums

3.1 Section 94 of the 2000 Act places a duty on local highway authorities and National Park authorities to establish local access forums to advise on public access to land for any lawful purpose and outdoor recreation, including public rights of way and the right of access to open country. (London borough councils are not required to establish local access forums but may resolve to do so.)

3.2 Membership of local access forums includes users of rights of way and the right of access to open country, landowners and occupiers, together with any other interests especially relevant to the area. Local access forums should focus on those issues that are most relevant to their own area, considering issues at the strategic level, taking care to direct advice to the most appropriate recipients and adopting a proactive approach. Authorities must have regard to forums' views in reaching decisions on access and public rights of way issues. Further information on local access forums is available through the following link-

www.defra.gov.uk/wildlife-countryside/cl/local-access-forums.htm

Liaison groups

3.3 To complement local access forums' strategic role, authorities may wish to establish, or maintain, liaison groups that, like local access forums, draw together the representatives of all interests in the rights of way network. In those areas where changes to the network are needed to ensure that it is better suited to the needs of users, or to help the efficient use of land for agriculture or protect wildlife, liaison groups can also play a valuable role in helping to define proposals and in ensuring that they represent the best possible balance between, and confer the greatest mutual benefit to, all interests. The more detailed scrutiny that liaison groups can give to rights of way proposals is a valuable adjunct to the work of local access forums and many local access forums have sub-group to perform this type of function.

Consulting the public before making orders

3.4 Local authorities should consult widely on proposals which could result in orders affecting public rights of way. This applies especially to proposed orders under the Highways Act or Town and Country Planning Act, where there may be alternative options. (Orders made under the Wildlife and Countryside Act reflect claims for rights which already exist and so there is less scope for negotiation about the preferred line of the route. Nevertheless, seeking information about a proposed 1981 Act order could produce material about its existence.) The prescribed organisations (see paragraph 3.8) are a starting point for the organisations to be consulted, but authorities should not regard these as the only organisations that they should consult.

Publicity for orders

3.5 Authorities have to publicise the making and confirmation of orders affecting public rights of way and the creation of footpaths, bridleways or restricted byways by agreement. In addition to the statutory requirements, authorities should consider wider publicity through prescribed organisations, other user groups, local access forums, and liaison groups.

3.6 Authorities must send copies of confirmed orders to Ordnance Survey. Authorities should send copies of orders which involve the authority certifying that a change has come into effect to Ordnance Survey after the authority has so certified. This is so that Ordnance Survey maps show, as far as possible, the ways that are available on the ground. Other orders should be sent after they have been confirmed.

Table: when authorities should send copies of orders¹ to Ordnance Survey

Provision	Ordnance Survey
<i>Highways Act 1980</i>	
s.26 Compulsory powers for creation of footpaths, bridleways and restricted byways	Order on confirmation
s.118 Stopping up of footpaths, bridleways and restricted byways	Order on confirmation
s.118A Stopping up of footpaths, bridleways and restricted byways crossing railways	Order on confirmation
s.118B Stopping up of certain highways for purposes of crime prevention, etc	Order on confirmation
s.119 Diversion of footpaths, bridleways and restricted byways	Order on certification
s.119A Diversion of footpaths, bridleways and restricted byways crossing railways	Order on certification
s.119B Diversion of certain highways for purposes of crime prevention, etc	Order on certification
s.119D Diversion of certain highways for protection of sites of special scientific interest	Order on certification
<i>Wildlife and Countryside Act 1981</i>	
s.53(3)(c)(ii) definitive map modification order	Order on confirmation
s.53(3)(c)(iii) definitive map modification order	Order on confirmation
<i>Town and Country Planning Act 1990</i>	
s.257 Footpaths, bridleways and restricted byways affected by development : orders by other [than Secretary of State] authorities	Order on certification
s.258 Extinguishment of public rights of way over land for held for planning purposes	Order on confirmation
<i>Acquisition of Land Act 1981</i>	
s.32 Power to extinguish certain public rights of way	Order on confirmation

1. Including orders which also have the effect of modifying the definitive map and statement (s.53A of the Wildlife and Countryside Act 1981).

3.7 Authorities are also asked to send Ordnance Survey copies of other orders which affect the network of public rights of way, for example under section 3 of the Cycle Tracks Act 1984 or under section 294 of the Housing Act 1985, and copies of notices of dedication of public rights of way under section 25 of the Highways Act 1980.

Prescribed organisations

3.8 Authorities must send copies of the statutory notices of orders made as specified below to the organisations listed.

Notices about Highways Act 1980, Wildlife and Countryside Act 1981 and Town and Country Planning Act 1990 orders	
<i>All notices</i>	
Auto Cycle Union	Wood Street Rugby CV21 2XY
British Horse Society	Stoneleigh Deer Park Stareton Lane Kenilworth Warwickshire CV8 2XZ
Byways and Bridleways Trust	PO Box 117 Newcastle upon Tyne NE3 5YT
Cyclists' Touring Club	Parklands, Railton Road, Guildford. Surrey GU2 9JX
Open Spaces Society	25A Bell Street Henley on Thames RG9 2BA
Ramblers' Association	2nd Floor Camelford House, 87-90 Albert Embankment London SE1 7TW
<i>Notices about orders affecting land in Dacorum borough, the districts of Chiltern, Wycombe, South Bucks, Aylesbury Vale, Three Rivers, North Hertfordshire, South Oxfordshire, South Bedfordshire, Mid Bedfordshire and Luton Borough</i>	
Chiltern Society	White Hill Centre, Chesham, Bucks, HP5 1AG
<i>Notices about orders affecting land in Cheshire, Derbyshire, Greater Manchester, Lancashire, Merseyside, South Yorkshire, Staffordshire and West Yorkshire</i>	
Peak and Northern Footpaths Society	Taylor House 23 Turncroft Lane Offerton Stockport SK1 4AB
Notices about Wildlife and Countryside Act 1981 orders	
British Driving Society	27 Dugard Place Barford CV35 8DX
Notices about orders creating footpaths, bridleways or restricted byways on land adjacent to operational railway lines	
Network Rail	40 Melton Street, London. NW1 2EE

Unless authorities have been notified otherwise by the head office of the prescribed organisation, they should send copies of notices to the addresses in the table above (the head offices).

3.9 Authorities must also notify any person who requires them to do so of orders made over a given period. This requirement may apply to every order made by the authority or orders of a particular description and may relate to the whole or any part of their area. Authorities may make a reasonable charge for doing so.

4. Recording the network

The definitive map and statement

4.1 Surveying authorities are responsible for definitive maps and statements. They have a duty to keep them as up to date as possible, referring to all the available evidence so as to maintain an authoritative map and statement of the highest attainable accuracy. Authorities should give priority to producing an up to date map and statement on which all public rights of way are recorded and which covers all of their area.

4.2 Section 53 of the 1981 Act requires authorities to keep their definitive maps and statements under continuous review and to modify them by way of orders where they are shown to be wrong. The starting point is the definitive map and statement for a particular area as defined in section 53(1), i.e.:

- (i) the latest definitive map and statement following the completion of a review carried out under section 33 of the 1949 Act as originally enacted or as amended by the 1968 Act; or
- (ii) where no review took place, or the first review was abandoned under the provisions of section 55 of the 1981 Act, the original definitive map and statement prepared under section 32 of the 1949 Act; or
- (iii) for those former county boroughs and other excluded areas for which the survey provisions were never adopted or for areas where a survey was begun, but abandoned, the map and statement prepared under section 55(3)

until replaced by a modified map and statement prepared in accordance with the provisions of section 57(3). Section 57(3) of the 1981 Act enables authorities to consolidate modification orders into a new map and statement. Section 57A enables authorities to prepare a consolidated map for whole of their area. The relevant date of a new map and statement should be not more than six months before the date on which it is prepared, and should be later than the relevant date of the last modification order consolidated into it.

4.3 Section 53(2) of the 1981 Act requires surveying authorities to modify their definitive maps and statements by order as soon as reasonably practicable after the occurrence of any of the events specified in section 53(3). Section 53(2) distinguishes between events which occurred before and those which occurred after 28 February 1983. The second part also includes the requirement for definitive maps and statements to be kept under continuous review. However authorities were not required to complete the modification of their maps and statements for events which preceded the commencement of the new procedure before embarking on modifications relating to subsequent events: the process is simultaneous. Moreover, in making orders there is no need for authorities to differentiate between

events which preceded and those which succeeded the commencement of the new procedure. It is possible for both to feature in the same order.

4.4 The conclusive evidential effect of definitive maps and statements means that where it is claimed that a way shown on the map ought not to be there, or ought to be there but of a lower status, the evidence must show that no right of way existed or that a right of way is of a lower status than that shown at the relevant date of the definitive map on which the way was first shown. The authority does not have to prove that the map is correct. New evidence must have been discovered which, when considered with all other relevant evidence, shows that a mistake was made when the right of way was first recorded in the definitive map and statement. The evidence may relate to some evidence after the relevant date such as twenty years uninterrupted use, or may relate to information which was available at the relevant date e.g. an enclosure award, but which was not taken into account when the map was prepared.

Byways open to all traffic

4.5 A byway open to all traffic (BOAT) is a vehicular right of way which is used by the public mainly for the purposes for which footpaths and bridleways are used. When deciding whether a way ought to be shown on the definitive map and statements as a BOAT, authorities should examine the characteristics of the way; relevant case law suggests that, for a carriageway to be a BOAT, it is not a necessary precondition for there to be equestrian or pedestrian use or that such use is greater than vehicular use. The test also relates to its character or type and whether it is more suitable for use by walkers and horse riders than vehicles. Further information is available in the [Planning Inspectorate's rights of way Advice Note 8](#). Where a way presumed to have been dedicated as a highway for all purposes under section 31 of the Highways Act 1980 also satisfies the definition of a byway open to all traffic, authorities may make an order to add the way to the definitive map and statement under section 53(3)(c)(i) of the Act.

Restricted byways

4.6 The 2000 Act created a new category of highway - restricted byways - carrying a public right of way on foot, on horseback or leading a horse, and for vehicles other than mechanically propelled vehicles. From 2nd May 2006, ways which were shown in definitive maps and statements as roads used as public paths (RUPPs) were instead treated as being shown as restricted byways and have restricted byway rights created over them. The restricted byways implementing legislation provides that restricted byways may also be created and the 2006 Act provides that restricted byways may be added (by an order under the 1981 Act) to the definitive map and statement on the basis of user or documentary evidence. Part 6, Section 68 of the 2006 Act also clarifies that a qualifying period of use by pedal cycles may give rise to a restricted byway.

4.7 Where, with regard to former RUPPs, there is any ambiguity between the map and statement, the map takes precedence. Where a way is shown in the map with

the restricted byway notation but has some other description associated with it – carriageway recorded as footpath, for example, authorities should modify the description to show a restricted byway. But where a way is shown in the map with the restricted byway notation but is described in the definitive statement as a byway open to all traffic, authorities should modify the notation to show byway open to all traffic. Any orders or applications for orders modifying the status of a road used as public path which were made before 2nd May 2006 are to be processed to a final determination. Further guidance on restricted byways is available in Defra's guidance on the 2006 Act, which can be accessed via the following link – www.defra.gov.uk/wildlife-countryside/issues/public/restricted-byways.htm

Unclassified county roads on the list of streets

4.8 In relation to an application under the Wildlife and Countryside Act 1981 to add a route to a definitive map of rights of way, the inclusion of a highway described as an unclassified county road on the Highways Act list of highways maintained at public expense may provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. It would be possible for a way described as an unclassified county road on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way provided the route fulfils the criteria set out in Part III of the Wildlife and Countryside Act. However, Authorities will need to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status.

Extinguishments under Part 6 of the 2006 Act

4.9 Part 6 of the 2006 Act extinguished, on 2nd May 2006 (26th November in Wales), all unrecorded public rights of way for mechanically propelled vehicles, with certain exceptions. The exceptions were, broadly, for highways that were part of the 'ordinary roads' network or highways that had been expressly created or dedicated as a public right of way for mechanically propelled vehicles. The Act provided for additional exceptions where, in certain cases, there were long standing applications, under section 53(5), to have a BOAT added to the definitive map and statement. The Act also curtailed the scope for the future creation of public rights of way for mechanically propelled vehicles by providing that they could only be created where they were expressly created for such vehicles. Further guidance can be accessed through the following link – www.defra.gov.uk/wildlife-countryside/cl/nerc06.htm

Modifying the definitive map and statement

4.10 The events to be taken into consideration in connection with the modification of definitive maps and statements are set out in section 53(3) of the 1981 Act.

Subsection 3(a) covers statutory changes to rights of way arising from orders under highways and other legislation and magistrates' court orders under s.116 of the Highways Act 1980.

Subsection 3(b) concerns the presumed dedication of footpaths, bridleways and restricted byways at common law or by virtue of section 31 of the Highways Act 1980. It can apply to ways shown on the definitive map and statement but over which higher rights are presumed to have been dedicated.

Subsection 3(c) relates to the discovery by authorities of evidence which shows that a right of way not shown on the map and statement subsists, or is reasonably alleged to subsist, and should be shown; or that a right of way already shown is of a different status; or that a right of way does not exist and should be removed, or that the particulars contained in the statement require modification.

4.11 Orders under subsection 3(a) should not be made until, where they are required to do so, authorities have certified or notified that the effect has taken place on the ground. These orders take effect on being made. Section 53A of the 1981 Act enables authorities to make orders which have the effect of modifying the definitive map and statement in line with the statutory changes arising from them without the need to make a separate order.

4.12 Authorities are under a duty to make an order modifying the definitive map and statement where they have evidence that a mistake has been made. They may discover evidence themselves or evidence may be presented with an application to modify the map and statement. This evidence must be newly discovered evidence not previously considered in the context of the way and the definitive map. Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified.

4.13 In the case of deletions, guidance in Circular 2/93 Annex B previously indicated that, on a way that had been incorrectly shown on the definitive map, a case for deemed dedication could be established on the basis of use in the period between the first recording of the way on the definitive map and its subsequent removal. Defra now believes this advice to have been wrong and is now of the view that it is not possible for a right of way to be dedicated as a right of way for the purposes of section 31 of the Highways Act when use of the way is by virtue of it already being shown on the definitive map. Defra's view is that use of the way in such circumstances can no longer be seen to be as of right, as rights that cannot be prevented cannot be acquired

4.14 Before making an order, authorities must consult other local authorities (including parish councils) in whose area the way is located but, in accordance with section 53(2)(b) of the 1981 Act, authorities should make the order as soon as reasonably practicable after they have concluded that one should be made.

4.15 Authorities should include sufficient, accurate information for the way to be unambiguously identified. They should include in orders information about the width of ways to be added to the definitive map and statement. Authorities should also record limitations and conditions, for example: gates, stiles and cattle grids along the way, and any other information which is appropriate. Defra guidance on recording widths is available through the following link –

www.defra.gov.uk/wildlife-countryside/issues/public/non-stat-guid-width.pdf

4.16 The procedure for making and determining definitive map modification orders under section 3(b) and (c) is set out in Schedule 15 to the 1981 Act. The Schedule provides for the publication of notices announcing the making of orders, the consideration of representations and objections and the modification of orders.

Applications for definitive map modification orders

4.17 Section 53(5) enables any person to apply to the authority for an order to be made modifying a definitive map and statement as respects any of the events specified in subsection 53(3)(b) or (c). The procedure for making and determining applications is set out in Schedule 14 of the 1981 Act.

4.18 Authorities are required to investigate applications as soon as reasonably practicable and, after consulting the relevant district and parish councils, decide whether to make an order on the basis of the evidence. Authorities should be mindful that applicants have the right to ask the Secretary of State to direct them to reach a decision on an application where no decision has been reached within twelve months. The Secretary of State, in considering whether, in response to such a request, he should direct an authority to determine an application for an order within a specified period, will take into account any statement made by the authority setting out its priorities for bringing and keeping the definitive map up to date; the reasonableness of such priorities; any actions already taken by the authority or expressed intentions of further action on the application in question; the circumstances of the case; and any views expressed by the applicant.

4.19 Decisions on applications must be served on the applicant and on the owner and occupier of the land involved. Reasons should be given where an application is refused. Authorities should also be mindful that applicants have the right to ask the Secretary of State to direct them to make an order where the applicant believes that the authority was wrong to refuse to make an order.

4.20 Authorities must record all applications for definitive map modification orders in a register that is available to the public – see paragraph 2.5.

Publicity for orders

4.21 The content of notices announcing the making of orders and the publicity to be given to them are set out in paragraph 3 of Schedule 15 to the 1981 Act. The notice must be published in at least one local newspaper circulating in the area in

which the land to which the order relates is situated and a copy, together with a copy of the order or relevant extract from the order, served on every owner and occupier of that land; the relevant district and parish council; the prescribed organisations; the National Park Authority and such other persons as the authority considers appropriate.

4.22 A copy of the notice must be displayed in a prominent position at both ends of the way. The notice must be accompanied by a plan illustrating the effect of the order. The notice must also be displayed at council offices in the locality and any other places considered by the authority to be appropriate. The places should be reasonably accessible to local people.

Representations and objections

4.23 Authorities should seek to forestall representations and objections by prior discussion and negotiation with landowners, users and representative organisations. Authorities should have regard to the code of practice on consultation in the Rights of Way Review Committee's Practice Guidance Note 1. They should also try to resolve representations and objections when they have been made.

4.24 The period for making representations and objections must be not less than 42 days from the date of publication of the notice that an order has been made. Authorities should publish the notice in a newspaper(s) that circulates widely and reliably within the area. They should serve and display notices of the making of an order at the same time as the notice is published. Authorities should ensure that a copy of the order and accompanying map are available for inspection at all reasonable hours for the period.

4.25 Paragraph 3(8) of Schedule 15 provides for any person, at any time before the objection period expires, to require the authority to provide, within 14 days of the receipt of the request, details of any documents it took into account in making the order. There is also provision for people to inspect and take copies of documents in the possession of the authority and to be informed by the authority of the whereabouts of documents not in its possession.

Confirmation of orders

4.26 Authorities confirm orders that are unopposed, or to which all the representations and objections have been withdrawn. Authorities must send orders to which there are representations or objections, and orders which are unopposed but require modification, to the Planning Inspectorate. The Planning Inspectorate has a checklist of documents which must accompany orders sent to them for confirmation. [Further information is available on the on the Planning Inspectorate's Rights of Way Checklist.](#)

4.27 Paragraph 5 of Schedule 15 provides that where one order contains modifications to the definitive map or statement to which there are representations or objections and others to which there are none, the authority can confirm the unopposed part of the order, which has the effect of modifying the definitive map and statement to the extent of the confirmed part, before submitting the order to the Planning Inspectorate to deal with the modifications to which there are representations or objections. Authorities must notify the Planning Inspectorate where they intend to do this.

Publicising decisions on orders

4.28 The requirements for publicising confirmed orders and the non-confirmation of orders are specified in paragraph 11 of Schedule 15. Confirmed orders are given the same publicity as that given to made orders. A copy of the decision not to confirm an order must be served on the persons on who notice of the making of the order was served.

Preparation of definitive maps and statements for excluded areas

4.29 Only the area of the former inner London County Council, i.e. broadly the area of the present Inner London Boroughs, is now excluded from the survey provisions of the 1949 Act. Under section 58(2) of the 1981 Act, the London borough councils may by resolution adopt the provisions of sections 53-57 for the whole or any part of their area.

4.30 The provisions enable an authority to prepare a definitive map and statement by building up from nothing a comprehensive record of the rights of way within its area through adding rights of way to a blank map and statement by means of orders made under section 53 of the 1981 Act. Once modified, that map and statement becomes the definitive map and statement for the area.

5. Changing the network

5.1 Improved management, combined with better information and the creation of new routes in carefully chosen locations would make a significant difference to people who use, or who would like to use, footpaths, bridleways, restricted byways and BOATs. In areas where rights of way are fragmented, new, short links between existing routes would provide a more extensive and useful local network than exists at present. Local highway authorities also need to improve the management and maintenance of the existing network. In order to meet the Government's aim of better provision for cyclists, equestrians, walkers and people with mobility problems, local highway authorities will need to understand the use and demand for rights of way. They will, thereby, be able to meet the spectrum of needs and expectations of people with all levels of interest and ability.

Rights of Way Improvement Plans

5.2 Rights of way improvement plans, which are being progressively integrated into Local Transport Plans, are intended to be the prime means by which local highway authorities will identify the changes to be made, in respect of management and improvement, to their local rights of way network in order to meet the Government's aim of better provision for cyclists, equestrians, walkers and people with mobility problems. Authorities should follow *Rights of Way Improvement Plans: Statutory Guidance to Local Highway Authorities in England* for guidance on implementing the Countryside and Rights of Way Act 2000 provisions on rights of way improvement plans. Further information and copies of the guidance are available through the following link –

www.defra.gov.uk/wildlife-countryside/issues/public/improvement-plan.htm.

Highways Act 1980: creating, diverting and extinguishing rights of way

5.3 The statutory provisions for creating, diverting and extinguishing public rights of way in the Highways Act 1980 have been framed to protect both the public's rights and the interests of owners and occupiers. They also protect the interests of bodies such as statutory undertakers. The requirements for making, confirming and publicising orders are set out in Schedule 6 to the 1980 Act.

Consents and consultations

5.4 Every other county or district council in whose area the way or proposed way is situated must be consulted before a council makes an order. If a way to be extinguished or diverted lies partly within the area of an adjoining council that authority's consent must be obtained. Natural England must be consulted about any way or proposed way which affects a National Park or a National Trail (Long Distance Route).

5.5 Statutory undertakers should be consulted before an order is made and where necessary their consent obtained. Section 121(4) of the 1980 Act provides that they may refuse to consent to the confirmation of extinguishment and diversion

orders. The Secretary of State for Transport must give his approval if a proposed right of way is to connect with a trunk road. Where notices are required to be served on owners of land and the land belongs to an ecclesiastical benefice, notice must also be served on the Church Commissioners. The consent of the appropriate authority as defined in section 327 of the Act is required in respect of Crown land.

Protection for agriculture and forestry

5.6 In making Highways Act creation agreements and creation, diversion and extinguishment orders, authorities are required under sections 29 and 121(3) of the 1980 Act to have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features.

Widths

5.7 There are no standard widths for ways which are created or diverted under the 1980 Act. Local circumstances about what widths are appropriate or achievable vary. But authorities should specify widths in every Highways Act order. Defra guidance on recording widths is available through the following link – www.defra.gov.uk/wildlife-countryside/issues/public/non-stat-guid-width.pdf

Representations and objections

5.8 The period for making representations and objections must be not less than 28 days from the date of publication of the notice that an order has been made. Authorities should publish the notice in a newspaper(s) that circulates widely and reliably within the area. They should serve and display notices of the making of an order at the same time as the notice is published. Authorities should ensure that a copy of the order and accompanying map are available for inspection at all reasonable hours for the period.

5.9 Authorities should seek to forestall representations and objections by discussion and negotiation with landowners, users and representative organisations before making orders. Authorities should have regard to the code of practice on consultation in the Rights of Way Review Committee's Practice Guidance Note 1: **Consultation on changes to public rights of way and definitive maps**. They should also try to resolve representations and objections which are duly made.

Confirming orders

5.10 Authorities may confirm orders which are unopposed or to which all duly made representations and objections have been withdrawn. Authorities have the discretion not to proceed with orders to which there are representations or objections. In order to bring the procedure to an end, the authority must make a formal resolution not to proceed, and should notify the applicant and those who have made representations or objections of the resolution.

5.11 Orders to which there are duly made representations or objections, or which require modification, are confirmed by the Planning Inspectorate. Once an order is submitted to the Planning Inspectorate the power of decision passes to them (but if all the representations and objections to a Highways Act order have been withdrawn, the Inspectorate will ask the authority if it wants to confirm the order). The Planning Inspectorate has a checklist of documents which must accompany orders sent to them for confirmation.

Charges for making orders

5.12 Under the Local Government (Recovery of Costs for Public Path Orders) Regulations 1993 amended by Regulation 3(3) of The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996, authorities can charge applicants the costs of making orders under: sections 118 – 119A of the 1980 Act; section 26 of the 1980 Act, where an order is made concurrently with an order under section 118; and sections 257 and 261(2) of the 1990 Act. There is no provision for authorities recover the costs for SSSI diversion orders under sections 119D and 119E if the 1980 Act.

5.13 Authorities should publish scales of charges and should inform applicants in advance of the maximum charge for their application. Authorities must not charge more than the costs they have incurred. For opposed orders, authorities can charge for the administrative costs incurred only up to the point where the order is submitted to the Planning Inspectorate. Where an order is confirmed, they can charge for advertising that confirmation. Applicants are not entitled to a refund if an order is not confirmed.

- 5.14 Examples of the costs which authorities may incur in making an order are:
- notifications to landowners, statutory undertakers, prescribed organisations, other local authorities and other persons;
 - posting notices on site and elsewhere;
 - advertisements;
 - site inspections;
 - research into the status and previous history of the way;
 - negotiations with applicants and other interested parties before making the order;
 - preparing reports for Committee; and
 - preparing orders and notices.

Authorities can recover from applicants the costs of informal consultations (such as negotiations between authorities, applicants, landowners, user groups and any other interested parties) where they lead to orders being made.

5.15 Before making an order, authorities can require the owner, lessee or occupier of the land to enter into an agreement under section 119(5) of the 1980 Act to defray or contribute towards expenses incurred by the authority in bringing a new way into a fit condition for use by the public.

Claims for compensation

5.16 Claims for compensation under section 28 of the 1980 Act (or as applied by section 121(2) as amended) from persons with an interest in the land affected by an order must be made in writing to the authority and served on it within six months from the date on which the order comes into operation.

Sections 25, 26, 118 and 119 of the Highways Act 1980

5.17 Section 25 of the Highways Act 1980 provides for the creation of a footpath, bridleway or restricted byway by agreement. Notice of the agreement must be given in a local newspaper circulating in the area. There is no requirement to consult users before entering into an agreement but authorities should notify parish councils and user organisations about the ways thus created.

5.18 Under section 26 of the 1980 Act authorities can make orders creating footpaths, bridleways and restricted byways. Before making an order, authorities must be satisfied that it is expedient that the way should be created having regard to the extent to which it would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and the effect that the creation would have on the rights of persons interested in the land, account being taken of the Act's provisions as to compensation. Authorities should allow sufficient time between the date of confirmation and the date on which the order takes effect for the new right of way to be brought into a fit condition for public use.

5.19 Section 118 of the 1980 Act enables authorities to make orders extinguishing footpaths, bridleways and restricted byways. Ways need not be shown on the definitive map and statement before they can be extinguished but authorities must be satisfied as to the status of ways before making an order and take care to ensure that no unrecorded or unacknowledged rights are overlooked in the order-making process.

5.20 An order can be made only if the authority considers it expedient that the way should be stopped-up because it is not needed for public use. Authorities must disregard temporary circumstances, including any buildings or other structures preventing or diminishing the use of the way. For further information is available in the [Planning Inspectorate's Advice Note 9.](#)

5.21 Section 119 of the 1980 Act enables authorities to make orders diverting footpaths, bridleways and restricted byways. Ways need not be shown on the definitive map and statement before they can be diverted but, as with section 118 orders, authorities must be satisfied as to the status of ways before making an order and take care to ensure that no unrecorded or unacknowledged rights are overlooked in the order-making process.

5.22 Orders may be made in the interests of the owner, lessee or occupier of the land concerned, or authorities may initiate orders themselves in the interest of the

public. Authorities should disregard temporary circumstances, including any buildings or other structures preventing or diminishing the use of the way.

Landowners' right to apply

5.23 Schedule 6 of the 2000 Act inserted new provisions into the Highways Act 1980 that introduce a statutory right of application and associated right of appeal for orders to extinguish or divert public rights of way. The right to apply would enable owners, lessees and occupiers of land used for agriculture, forestry or for the breeding or keeping of horses, and school proprietors, to apply to a local authority (or National Park authority) for a public path or special order to permanently extinguish or divert a public right of way. A consultation paper on the Right to Apply and Right to Appeal sets out how the provisions would work, it can be accessed through the link below. Defra is currently considering how to proceed with these provisions.

www.defra.gov.uk/corporate/consult/row-rights/index.htm

Special orders

Crime prevention

5.24 Schedule 6 of the Countryside and Rights of Way Act 2000 inserted new sections 118B and 119B into the Highways Act 1980, which enable highway authorities to close or divert rights of way on the grounds of crime prevention in areas designated for this purpose by Defra. The first stage of the process is for the relevant highway authority to apply to Defra to have an area designated. If successful, they can then make special extinguishment orders in much the same way as they are currently able to close rights of way for other reasons. For further information please refer to

<http://www.defra.gov.uk/wildlife-countryside/cl/rowcrime/crimeguidance.pdf>

Schools

5.25 Sections 118B and 119B of the Highways Act 1980 also enable highway authorities to close or divert a right of way that crosses school land, if necessary, for the purpose of protecting pupils or staff. These provisions have an associated right of application – see paragraph 5.23.

SSSI diversions

5.26 Schedule 6, paragraph 12 of the 2000 Act inserts new sections 119D and 119E into the Highways Act 1980. These enable a local highway authority, at the request Natural England, to make an order to divert a public right of way where the public use of the highway is causing, or continued public use is likely to cause, significant damage to a site of special scientific interest (SSSI). Further information and guidance can be accessed through the following link –

www.defra.gov.uk/wildlife-countryside/issues/public/sssi-tempdiv.htm.

Temporary diversions for dangerous works

5.27 Schedule 6, paragraph 16, of the 2000 Act inserts new sections 135A and 135B, into the Highways Act 1980. These enable a landowner, or more specifically the occupier, to temporarily divert a right of way across their land for up to 14 days in any one year to enable certain dangerous works to take place. These provisions are yet to be implemented.

Rail crossing extinguishment and diversion orders (sections 118A and 119A)

5.28 Rail operators have the right to apply for rail crossing orders, which extinguish or divert footpaths, bridleways or restricted byways that cross railways by means of level crossings. Authorities make orders under sections 118A and 119A of the Highways Act 1980. Authorities must be satisfied that it is expedient to make a rail crossing extinguishment or diversion order having regard to all the circumstances, in particular whether it is reasonably practicable to make the crossing safe for use by the public, and the arrangements to be made for ensuring that barriers and signs will be erected and maintained if the order is confirmed.

5.29 The Rail Crossing Extinguishment and Diversion Orders Regulations 1993 prescribe the information the rail operator must supply when applying for a rail crossing order, and the form of orders and notices.

5.30 Section 118A(1) provides for the extinguishment of a footpath, bridleway or restricted byway that crosses a railway otherwise than by a tunnel or bridge where it appears to the council expedient in the interests of the safety of members of the public using it or likely to use it. Section 118A(2) provides that the order may extinguish the right of way on the crossing itself and for so much of its length as the authority deems expedient from the crossing to its intersection with another highway over which there subsists a like right of way. Where an order is confirmed, signs should be erected at both ends of the extinguished way informing users that of the extinguishment and advising them of the nearest alternative route. Authorities should also consider whether to provide a map or to erect signposts and waymarks showing the alternative route. Section 118A (5) provides that authorities may require the operator to enter into an agreement to defray, or contribute towards, any expenses incurred in connection with the erection or maintenance of any barriers or signs.

5.31 Section 119A(1) provides for the diversion of a footpath, bridleway or restricted byway that crosses a railway otherwise than by a tunnel or bridge where it appears to the council expedient in the interests of the safety of members of the public using it or likely to use it. While other criteria are not specified in section 119A, the new way should be reasonably convenient to the public. Authorities should also consider the effect that the diverted way will have on the rights of way network as a whole and the safety of the diversion, particularly where it passes along or across a vehicular highway. Under section 119A (6) the authority may require the operator to maintain all or part of the way created by the order and

under section 119A (8) the authority may require the operator to enter into an agreement to defray part or all of any compensation that may be payable together with any expenses reasonably incurred in connection with the erection and maintenance of barriers and signs or in making up the new way.

5.32 Authorities should consider whether a bridge or tunnel should be provided in place of the crossing which is proposed to be extinguished or diverted. Under section 48 of the Transport and Works Act 1992 the Secretary of State for Transport may make an order requiring the operator to provide a bridge or tunnel at or reasonably near to the crossing, or improve an existing bridge or tunnel, for this purpose. Enquiries on bridge and tunnel orders should be addressed to the Department for Transport.

Concurrent orders

5.33 The extent to which a creation or diversion order or rail crossing diversion order, made in association with the extinguishment order, would provide an alternative way to that proposed for extinguishment may be taken into consideration in the determination of the extinguishment order. Where related extinguishment and creation or diversion orders have been made concurrently and representations or objections have been made to one but not the other, authorities are advised to submit both orders to the Planning Inspectorate for confirmation. There is no provision for combining both creation and extinguishment in one order. For further information is available in the [Planning Inspectorate's Advice Note 9](#).

Joint/Combined orders

5.34 The 2000 Act inserts a new section 53A into the 1981 Act that will remove the requirement for authorities to make a separate order modifying the definitive map to take account of changes made to the rights of way network by certain creation, diversion and extinguishment orders, under the 1980 and 1990 (and associated) Acts. The orders to which section 53A will apply will be prescribed in regulations. These regulations came into force on the 6 April 2008.

Section 116 of the Highways Act 1980

5.35

Section 116 of the 1980 Act enables authorities to apply to a magistrates' court for an order to extinguish or divert a highway of any description other than a trunk or special road. These provisions apply therefore to footpaths, bridleways, restricted byways and byways open to all traffic, even though there are powers available in the 1980 Act (and other analogous provisions) to extinguish and divert these rights of way.

There may be circumstances where it is appropriate to use the magistrates' court procedure. For example, section 116 could be used to extinguish or divert a footpath or bridleway (or retain such rights) and simultaneously extinguish a vehicular right of way. It could also be used to extinguish vehicular rights and

preserve footpath, bridleway or restricted byway rights over byways open to all traffic - although authorities should be aware that this could expose the way to ploughing with the result that its character and appearance as a landscape feature is destroyed. Nonetheless, authorities should make use of the other powers available extinguish or divert rights of way unless there are good reasons for not doing so.

6. Managing and maintaining the network

6.1 Most public rights of way are maintainable at public expense. The duty to maintain highways rests with local highway authorities. Authorities may also maintain public rights of way that are not publicly maintainable.

6.2 Non-metropolitan district councils can assume responsibility for the maintenance of footpaths, bridleways and restricted byways in their area in accordance with section 42 of the 1980 Act. They can also undertake the work on behalf of the authority under section 101 of the Local Government Act 1972.

6.3 Under section 43 of the 1980 Act parish councils can maintain footpaths, bridleways and restricted byways in their area without the prior consent or agreement of the authority, but maintenance by such councils does not absolve local highway authorities from discharging their responsibilities. Under section 50 of the 1980 Act, district and parish councils can maintain those footpaths and bridleways not maintainable at public expense without prejudice to the responsible owners' rights and duties.

6.4 Maintenance should be such that ways are capable of meeting the use that is normally made of them at all times of the year. Maintenance need not conform to an arbitrary standard of construction or appearance. It should harmonise with the general appearance and character of the surroundings. Section 54(7) of the 1981 Act states that authorities are not obliged to provide, on a way shown on a definitive map and statement as a byway, a metalled carriageway or a carriageway which is by any other means provided with a surface suitable for the passage of vehicles. But this does not absolve authorities from maintaining byways so that they are capable of handling normal use.

6.5 Authorities should make use of help from landowners and voluntary groups in carrying out their duties towards maintaining public rights of way.

Gates and stiles/keeping ways clear of overhanging vegetation

6.6 Under section 146(1) of the 1980 Act, landowners are responsible for maintaining gates, stiles and similar structures across footpaths, bridleways or

restricted byways, whether or not they are shown on the definitive map. Authorities must contribute not less than a quarter of the expenses reasonably incurred by landowners in doing so. Where it appears to an authority that the landowner is not complying with his statutory duty, the authority may give notice to the landowner of their intention to take the necessary steps for repairing and making good the stile, gate or other works. The authority may recover the expenses reasonably incurred on doing so from the landowner. For further information on this is available on: www.defra.gov.uk/wildlife-countryside/issues/public/index.htm#commence

6.7 Section 154(1) of the 1980 Act enables local highway authorities and non-metropolitan district councils to require owners and occupiers of land whose trees, shrubs or hedges overhang highways to the extent of endangering or obstructing the passage of vehicles, pedestrians or horse-riders, to cut the vegetation back. Section 154(1) (c) applies these provisions to permissive paths. Authorities may also serve notice on land owners or occupiers to remove hedges, trees or shrubs likely to cause danger by falling. Where the authority cuts back vegetation or removes dangerous trees, shrubs or other vegetation, it may recover the expenses reasonably incurred on doing so from the person in default.

Obstructions

6.8 Under section 130(1) of the 1980 Act highway authorities are under a duty to assert and protect the rights of the public to use and enjoy those public rights of way for which they are responsible. They are also under a duty under section 130(3) of the 1980 Act to prevent, as far as possible, the stopping-up or obstruction of those public rights of way for which they are responsible. Authorities are also empowered to safeguard public enjoyment of those highways for which they are not responsible, and to prevent the obstruction or stopping up of such highways where this is considered to be prejudicial to the interests of their area. In addition authorities are required under subsection (6) to take remedial action whenever they receive representations from a parish council or parish meeting that a way has been obstructed or stopped-up, or that unlawful encroachment on to roadside waste has taken place. The Act empowers highway and other authorities to institute legal proceedings or take whatever steps they deem expedient in discharging these duties.

6.9 It is important that authorities act quickly to investigate any complaint made to them. Authorities should ensure that any obstructions they discover or have reported to them are removed as soon as is reasonably practicable. Section 143 enables authorities to secure the removal of structures on the highway by serving notice on the person responsible and by removing the obstruction themselves at the person's expense should that person fail to comply with the notice. Section 149 also enables an authority to have any 'thing' so deposited on a highway as to constitute a nuisance or danger to users removed forthwith. Where voluntary means do not work, authorities should give preference to using the powers which enable them to carry out works and recover the costs of doing so from the person responsible.

6.10 In dealing with obstructions, authorities should be aware that information recorded in the definitive statement about position or width or as limitations or conditions affecting a public right of way is conclusive evidence of position, width, limitations or conditions. Information may be recorded in the definitive statement which, in practice, restricts the use of the way by those whose rights to use it are recorded on the definitive map. Where such information is not about position or width or is not recorded as a limitation or condition, authorities should examine the evidence in each case in order to resolve the inconsistencies.

6.11 Sections 130A-130D of the 1980 Act enable any person to serve a notice on a local highway authority, requesting it to secure the removal of an obstruction on a public right of way. Should the authority refuse or fail to take action, the applicant can seek a magistrates' court order compelling the authority to act. Further information can be accessed through the following link –

www.defra.gov.uk/wildlife-countryside/issues/public/remove-obstruct.htm

Wilful obstruction of a highway

6.12 Under section 137ZA of the 1980 Act, when convicting a person under section 137 of that Act of wilfully obstructing a highway, the magistrates' court can order that person to remove the obstruction. A person who has been ordered to remove an obstruction cannot be prosecuted again under section 137 in respect of that obstruction during the period for removing it set by the court under section 137ZA. Nor can a person be prosecuted during any period for complying with directions set by the court under section 311(1) of the 1980 Act.

6.13 Authorities have powers at common law to remove unlawful obstructions in certain circumstances. Where authorities choose to exercise these powers after a person has been convicted under section 137ZA (3), section 137ZA (4) in conjunction with section 305 of the 1980 Act allows authorities to recover expenses reasonably incurred in doing so.

Corporate responsibility

6.14 The Highways (Obstruction by Body Corporate) Act 2004 addressed concerns that the setting up of a company to hold land over which a right of way runs might be seen as a way of circumventing the legislation to prevent the obstruction of highways. Before the 2004 Act, the rights of way provisions in the 1980 only allowed enforcement action to be taken against a company as a body corporate. This meant that even if the individual officers of a company had consented to or connived in the offence being committed, enforcement action could not be taken against them. In addition, if the corporate body concerned had few or no net assets, it could be very difficult for the courts to recover any fines imposed or enforce action to remove an obstruction. The 2004 Act amended the 1980 Act to apply section 314 of that Act (which enables criminal proceedings against officers or members of a body corporate) to sections 137 and 137ZA to ensure that directors and other officers of a company, as well as the body corporate, can be convicted of

obstruction offences, and subject to fines (and a court order to remove the obstruction in the case of 137ZA), where they are culpable.

Disturbing the surface of ways

6.15 Where the surface of a footpath, bridleway or any other highway which consists of or comprises a carriageway other than a made up carriageway has been so disturbed as to render it inconvenient for the exercise of the public right of way, authorities, or district councils where they are responsible for maintaining a highway under section 42 or 50 of the 1980 Act, may carry out necessary work and recover expenses reasonably incurred in doing so.

Agricultural operations

6.16 Under section 134 of the 1980 Act an occupier of agricultural land or land which is being brought into use for agriculture has the right to plough or otherwise disturb, so as to render it inconvenient for the exercise of the public right of way, the surface of a cross-field footpath or bridleway in accordance with the rules of good husbandry provided that it is not reasonably convenient to avoid doing so. The land occupier is responsible for making good the surface of the way to not less than the minimum width so that it is reasonably convenient for the exercise of the right of way and to indicate the line of the way on the ground. There is no right for land occupiers to disturb the surface of any restricted byway or byway open to all traffic, or field edge footpaths or bridleways. Section 134(7) sets out the relevant periods for which the surface of ways can be disturbed.

6.17 Under section 134(6), authorities have a duty to make sure that land occupiers comply with these provisions. Where a land occupier fails to make good the surface of the way, the authority can enter onto the land, carry out any necessary works and recover expenses reasonably incurred in doing so.

6.18 Under section 135 of the 1980 Act, an authority can make an order authorising an excavation or engineering operation which will disturb the surface of a footpath, bridleway or restricted byway where it is reasonably necessary for the purposes of agriculture. The authority can also by order authorise the temporary diversion of the way where it is necessary to enable such works to be carried out. Authorities can recover from the applicant their reasonable expenses incurred in connection with the order.

6.19 Land occupiers who fail to reinstate the surface of ways disturbed by ploughing or other works within the statutory periods, or where reinstatement is not sufficient to for the reasonably convenient for the exercise of the right of way, can be prosecuted. Anyone can prosecute a land occupier under section 134 but only local highway authorities or district and parish councils with the consent of the local highway authority can prosecute offences under section 135 of the 1980 Act.

Width of paths for the purposes of disturbance

6.20 Minimum and maximum widths of footpaths, bridleways, restricted byways and byways open to all traffic for the purposes of restoration and the prevention of encroachment are set out in Schedule 12A to the 1980 Act. These minimum and maximum widths apply where no width is proved and only for the purpose of restoration of highways following disturbance or for keeping them clear of crops.

Traffic regulation orders

6.21 For more information on Traffic regulation orders please refer to the revised edition of Making the Best of Byways 2005 and the circular 'Regulating the use of motor vehicles on public rights of way and off road.' These can be accessed through the following link –

www.defra.gov.uk/wildlife-countryside/cl/mpv/index.htm

6.22 Section 72 of the 2006 Act gives National Park Authorities the power to make traffic regulation orders over rights of way and other, unsurfaced, highways with the National Park boundary. Further guidance is available through the following link – www.defra.gov.uk/wildlife-countryside/cl/mpv/index.htm#nppowers

Gating Orders

6.23 Sections 129A to 129G of the Highways Act 1980 allow authorities to make (or vary or revoke) gating orders on public highways other than trunk roads, special roads and classified roads. Gating orders may be used where the authority consider that a highway is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affects local residents or businesses. A gating order operates in a similar way to a traffic regulation order and restricts the public right of way over the highway and, where necessary, authorises the installation of gates or barriers to enforce the restrictions. Because the underlying highway status is not removed, the public right of way can be readily restored if the gating order is revoked and it is possible to make an order that imposes restrictions only at certain times of day. Further guidance is available through the following link [Respect - Members - Gating orders](#)

7. Planning permission and public rights of way

7.1 Section 257 of the 1990 Act gives local planning authorities the power to make orders to extinguish or divert footpaths, bridleways or restricted byways where it is necessary to enable development for which planning permission has been granted or development by a government department to be carried out. Authorities have no power to make orders for extinguishing or diverting vehicular highways in order to enable development to be carried out. Orders are made by the authority that granted the planning permission or, where permission was granted by the Secretary of State (including a permission contained in a special or general development order, or under an order designating an enterprise zone) or

development by a government department, by the authority which in normal circumstances would have granted the planning permission.

7.2 The effect of development on a public right of way is a material consideration in the determination of applications for planning permission. Authorities should ensure that the effect on all rights of way affected by the development are identified and taken into account when applications for planning permission are considered. Authorities should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way must be diverted or stopped up (but an authority must have good reasons if it proposes not to make or not to confirm an order). The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order.

7.3 Authorities should make sure that developers know that planning permission does not mean that an order will automatically be made or confirmed and that, even when planning permission has been granted and development has begun, affected rights of way should be kept open for public use until an order under section 257 of the 1990 Act has come into effect. Developers should not use footpaths, bridleways or restricted byways for vehicular access to the site.

7.4 Development affecting a public right of way must be advertised in a local newspaper and by posting a notice on the site. Provision of a new line for the way should be considered at the detailed planning stage. Wherever possible ways should be provided which pass through landscaped or open space areas away from vehicular traffic. They should be generally acceptable to the public. Estate roads and footways should not be used to provide a new line for an existing right of way unless there is no other option.

7.5 Where the length of way to be stopped up or diverted straddles two planning authority areas, the order must be made jointly by both authorities unless one authority discharges the functions of the other by means of an agreement under section 101 of the Local Government Act 1972.

7.6 "Rights of way" includes footpaths, bridleways and restricted byways recorded on the definitive map and statement, ways that are subject to applications for definitive map modification orders, or modifications that the authority itself may be proposing, and footpaths, bridleway or restricted byway not recorded on the definitive map.

Alternative highways

7.7 The 1990 Act enables orders to include provision for the creation of an alternative highway, or the improvement of an existing one, for use as a

replacement for one being stopped up or diverted. Whereas a diversion must either commence or terminate at some point on the line of the original way, an alternative way need not do so and may, for instance, run parallel to the way being stopped up. However, to avoid the creation of a cul-de-sac and to enable the public, where appropriate, to return to that part of the original way not affected by the development, any alternative way provided should link by means of other highways to the original way.

7.8 When the diversion or alternative right of way is proposed to be provided and dedicated over land not owned by the developer, the consent of the landowner(s) to the proposed dedication must be obtained before the order is made.

Where development is completed

7.9 Where the development affecting a way has been completed before an order to divert or extinguish the way has been [made or] confirmed, authorities cannot use the powers under sections 257 and 259 of the 1990 Act. Development should be regarded as completed if the work remaining to be carried out is minimal.

Extinguishment of public rights of way over land held for planning purposes

7.10 Section 258 of the 1990 Act enables an authority to make an order extinguishing a footpath, bridleway or restricted byway over land held for planning purposes if they are satisfied that an alternative right of way has been or will be provided or that an alternative is not required. The procedure for the making and confirmation of orders under section 258 is the same as that for orders under section 257. Similar powers are also available to the Secretary of State under section 251.

Consents and consultations

7.11 Orders made under section 257 of the 1990 Act which affect apparatus belonging to statutory undertakers cannot be confirmed without their consent.

7.12 If the proposed new highway connects with a trunk road the approval of the Secretary of State for Transport is necessary under section 24(2) of the 1980 Act.

Procedure in anticipation of planning permission

7.13 Authorities cannot make public path orders in anticipation of the granting of planning permission. But section 253 of the 1990 Act enables the Secretary of State to make and advertise a draft order where an application for planning permission has been made to him by a local authority or statutory undertaker, or the application stands referred to him in pursuance of a direction under section 77, or the applicant has appealed under section 78 against a refusal of planning permission or of approval required under a development order, or against a condition of such permission or approval.

Planning permission for the construction or improvement of highways

7.14 Where planning permission is granted for constructing or improving a highway and another highway crosses or enters the route of the highway or is or will be affected by such development, powers are available under section 248 of the 1990 Act to enable the Secretary of State to stop-up or divert such other highways where this is considered expedient in the interests of safety or to facilitate the movement of traffic on the highway. In addition, powers to make side road orders are available under section 14 of the 1980 Act in respect of trunk or classified roads (not being special roads). It is not appropriate to use sections 247 or 257 of the 1990 Act to stop-up or divert ways for these purposes.

Surface workings for minerals

7.15 Section 261(2) of the 1990 Act enables authorities to extinguish or divert footpaths, bridleways or restricted byways temporarily to enable the surface working of minerals to take place.

Charges for making orders

7.16 Authorities can charge applicants for making orders under sections 257 and 261 of the 1990 Act - see paragraph 7.1

8. Other provisions

Extinguishing public rights of way under the Acquisition of Land Act 1981

8.1 Section 32 of the Acquisition of Land Act 1981 enables local authorities empowered to acquire land compulsorily to make orders extinguishing non-vehicular public rights of way over land that has been or is being acquired compulsorily. This order-making power also applies where the land is being acquired by agreement, but only if it is also possible for the land to have been acquired compulsorily. The power applies generally to land acquired before these provisions were first enacted in 1946 provided that the legislation under which the land was acquired was in force on that date. The exceptions are set out in section 33(2) of the Act. The power does not apply to land held for development purposes. Orders made in anticipation of the acquisition of land cannot take effect until after the acquiring local authority has taken possession of the land or the acquisition has been completed. Orders require confirmation by the Secretary of State.

8.2 Before making an order the authority must be satisfied that a suitable alternative way has been or will be provided or is not required. Any alternative right of way should be provided by dedication if the local authority owns the land, or else by way of a public path creation agreement or order. Authorities may make a single order to cover more than one way across the land in question, or where ways extend across adjoining land held by different local authorities.

8.3 Before making an order authorities must obtain the consent of statutory undertakers whose apparatus would be affected by the order. Local authorities are also recommended to obtain the views of the local planning authority (if different from the order-making authority), parish councils, user groups and other people who may be affected by the order.

Housing Act 1985

8.4 Section 294 enables local housing authorities, with the approval of the Secretary of State, to extinguish any public right of way over land acquired by them for clearance. The order-making authority must publish the order and if there are objections the Secretary of State must hold a public inquiry unless he consider that there are special circumstances that make an inquiry unnecessary.

9. Applications for costs

9.1 The parties at hearings and inquiries relating to public rights of way orders made by local authorities are normally expected to meet their own expenses irrespective of the outcome. Subject to the exceptions outlined at paragraph 9.5 below, costs are awarded only on grounds of “unreasonable “behaviour. An award of costs does not therefore ‘follow the event’, in other words costs are not simply awarded to the party in whose favour the judgement goes. Applications for costs on grounds of unreasonable behaviour should be made to the inspector at the hearing or inquiry. Examples of unreasonable behaviour, by reference to what is expected generally of parties in appeals and other planning proceedings, and general procedural guidance are contained in Circular 8/93, “Awards of costs incurred in planning and other (including compulsory purchase order) proceedings”.

9.2 In general, and consistent with the statutory and policy framework for rights of way explained in this Circular and Annexes, the principal parties (that is, the local authority or a statutory objector) will not be at risk of an award of costs made against them unless the proceedings could reasonably have been avoided – for example where there is a fundamental defect in the order which renders it incapable of confirmation, or where there is a failure to comply with the normal procedural requirements of hearings and inquiries – and as a consequence this results in unnecessary, additional expense to the party applying. Similarly, objectors who exercise their right to be heard but subsequently fail to appear at the hearing or inquiry will be at risk of an award of costs against them for unreasonable behaviour.

9.3 The right of objection to an order is a statutory right but it should be exercised in a reasonable manner. Objectors who have been advised by the Secretary of State that their objections are not legally relevant and have been given the opportunity to modify them, but have declined to do so, will be at risk of an award of the authority’s costs being made against them (under section 250(5) of the Local Government Act 1972, as applied by paragraph 9 of Schedule 15 to the 1981 Act) if they pursue the objection, unmodified to a hearing or inquiry, but it must have been obvious that the objection, so pursued, had no reasonable prospect of success.

“Analogous” orders

9.4 Public path creation orders made under section 26 of the Highways Act 1980 are considered to be analogous to compulsory purchase orders, in that the making or confirmation of the order would take away from an objector some right or interest in land for which the statute gives a right to compensation. Extinguishment and diversion orders made under sections 118-119A of the 1980 Act may also be analogous, depending on the particular circumstances. The other types of order listed at paragraph 10.7 below are not considered to be analogous.

9.5 Therefore if a person with an interest in the land over which a path is to be created, extinguished or diverted successfully objects to such an order – that is the person attends, or is represented at, a hearing or inquiry and is heard as a statutory objector, and the order is not confirmed – an award of costs will be made in the person’s favour unless there are exceptional reasons for not doing so. No application for costs need be made at the hearing or inquiry by such an objector as the Secretary of State will write to the parties concerned. The award would be made against the authority making the order, although this would not, of itself, imply unreasonable behaviour by the authority.

9.6 General guidance on the award of costs in respect of compulsory purchase and analogous order procedure is provided in the separate guidance in Circular 8/93. Circular 8/93 is also amended as follows:

- Sub paragraphs (1) [definitive map modification and reclassification orders] and (2) [public path and rail crossing orders] of paragraph 9 no longer apply; and
- Annex 6 (costs in respect of compulsory purchase and analogous orders) applies to any orders of the kind listed at (6) [orders under section 26 of the Highways Act 1980] and (7) [orders made under sections 119 to 119A of the Highways Act 1980] of the Appendix to Annex 6 in which a hearing or an inquiry is held.

10. Role and powers of the Secretary of State

Town and Country Planning Act 1990

10.1 The Secretary of State can make an order under section 247 of the 1990 Act, for example where an application for planning permission is before him, either on appeal or following call-in, and it is considered expedient to invoke the concurrent procedure under section 253 of the Act. Otherwise, he will expect to exercise his power only in exceptional circumstances, for example in relation to development of strategic or national importance.

Highways Act 1980

10.2 The Secretary of State has powers under sections 26(2) and 120(3) of the Highways Act 1980 to make public path orders. These powers will be exercised only exceptionally.

Rail crossing orders

10.3 Where a rail operator has made a valid application for a rail crossing order and the council has neither confirmed the order nor submitted it to the Secretary of State for confirmation within 6 months of receipt, section 120(3A) provides that the Secretary of State may make the order without consulting the council. He will normally do so in response to a written request from the rail operator.

Wildlife and Countryside Act 1981

Applications to the Secretary of State

10.4 If an authority has not reached a decision on an application within 12 months the applicant can apply to the Secretary of State to direct the authority to determine the application by a specified date. The Secretary of State will consult the authority before deciding whether to issue a direction and whether to specify a date – see paragraph 4.18.

Appeals to the Secretary of State

10.5 In an authority refuses to make an order the applicant can appeal to the Secretary of State for a direction to the authority to make the order within a specified date. Appeals must be made within 28 days from the date on which the authority issued its decision – see paragraph 4.19

Orders to which there are representations or objections

10.6 Decisions on the confirmation of opposed public path and definitive map orders are usually taken by an inspector appointed by the Secretary of State. Occasionally, orders will be determined by a Government Office for the Region (where an order is made in connection with a planning case, for example) or by Defra. Where this occurs, the order making authority and others with an interest will be advised of the reasons for doing so.

Secretary of State's power to modify orders

10.7 The Secretary of State can modify rights of way orders as follows:

- (i) orders which require his confirmation under paragraph 2 of Schedule 6 to the Highways Act 1980 (orders under sections 26 and 118 – 119D of the Act or section 32 of the Acquisition of Land Act 1981);

(ii) orders which require his confirmation under paragraph 7(3) of Schedule 15 to the Wildlife and Countryside Act 1981 (orders made under sections 53 and 54 of the 1981 Act);

(iii) orders made by him under sections 26(2) and 120(3) of the 1980 Act;

(iv) orders which require his confirmation under paragraph 3(4) of Schedule 14 to the 1990 Act (orders under section 257 or 258 of the Act); and

(v) orders made by him under section 247 of the Town and Country Planning Act 1990; and

If a proposed modification to a submitted order under i, ii, iii and iv above would affect land which was not affected by the order when made (e.g. by virtue of a proposed modification to vary the line or increase the width or length of the right of way), the requirements in each of the relevant statutory provisions as to the giving of notice, and the time specified within which, and the manner in which representations or objections may be made etc, must be complied with.

10.8 In addition, for orders made under sections 53 or 54 of the 1981 Act, where a modification has the effect of deleting a way shown in the order, or adding a way not shown; or showing a right of way as being of a different status to that shown, the Secretary of State must give such notice as he considers appropriate to the proposed modification.

10.9 Where he makes a draft order under section 247 of the 1990 Act (v above) and then proposes to modify it, the Secretary of State would be bound by the requirements of section 252 to treat the order as a new order, and so would ensure that the owner of the land and anyone who made representations or objections to the original draft order was given the opportunity to make further representations or objections.

Secretary of State's power to modify definitive map orders which contain errors

10.10 When asking for modifications to correct errors, authorities should bear in mind that a modification order is published to allow the public to consider the reasons for the order and the effect of the order, and to raise representations or objections if they wish. The prescribed form of order ensures that the public has sufficient information to enable an informed decision to be made about whether or not to object to the order. Thus, if an order contains an error that does not

(i) prejudice the interests of any person,

(ii) render the order misleading in its purpose, or

(iii) appear to result in incorrect information being recorded on the definitive map,

it may be corrected by modification. However, if the error is substantive, the order will be returned to the authority with a written explanation as to why it was rejected, together with a written recommendation that the authority should notify all parties of the rejection and the reasons for it – see also the [Planning Inspectorate's Advice Note 20](#) for information on the Secretary of State's power to modify definitive map orders which are defective.

Annex A – Addresses

Defra (Recreation and Access Policy & Legislation)

Room 1/02

Temple Quay House

2 The Square

Bristol

BS1 6PN

The Planning Inspectorate

Room 3/01

Kite Wing

Temple Quay House

2 The Square

Bristol

BS1 6PN

Natural England

John Dower House

Crescent Place

Cheltenham

Gloucester

GL50 3RA

Department for Transport

Great Minster House

76 Marsham Street

London

SW1P 4DR

National Rights of Way Casework

Government Office for the North East

Citygate

Gallowgate

Newcastle upon Tyne

NE1 4WH

tel: 0191 202 3595

fax: 0191 202 3744

email: national.rightsofway.casework@gone.gsi.gov.uk

Rail crossing orders submitted to the Secretary of State

Room 1/02

Temple Quay House

2 The Square

Bristol

BS1 6PN

Annex B – Other relevant/useful sources of information

[Defra's rights of way web pages](#)

[Planning Inspectorate rights of way web pages](#)

DoE [Circular 8/93 \(on costs\)](#)

[Natural England rights of way web pages](#)

Natural England publications

[A guide to definitive maps and changes to public rights of way CA142](#)

[Waymarking public rights of way CA77](#)

[Managing Public Access CA210](#)

[The Countryside Code](#)

Institute of Public Rights of Way Management: [Rights of way good practice guide](#)

Annex C - statutory guidance/instruments

SI 2005 No 2461 The Public Rights of Way (Register of Applications under section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005

SI 2007 No 2334 The Dedicated Highways (Registers under Section 31A of the Highways Act 1980) (England) Regulations 2007

SI 2007 No 268 Local Access Forums (England) Regulations 2007

SI 2006 No 1177 The Restricted Byways (Application and Consequential Amendment of Provisions) Regulations 2006

SI 1996 No 1978 The Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996

SI 2007 No 1494 The Highways (SSSI Diversion Orders) (England) Regulations 2007

SI 2004 No 370 Removal of Obstructions from Highways (Notices etc) (England) Regulations 2004

SI 1993 No 9 The Rail Crossing Extinguishment and Diversion Order Regulations 1993

SI 2007 No 2542 The National Park Authorities' Traffic Orders (Procedure) (England) Regulations 2007

SI 1994 No 1519 The Traffic Signs and General Directions 1994