



**DEFINITIVE MAP TEAM**

# **DEFINITIVE MAP MODIFICATION ORDER APPLICATION**

## **INFORMATION AND FORMS**

**SECTION 53, WILDLIFE AND COUNTRYSIDE ACT 1981**

***PLEASE ATTACH A MAP SHOWING THE PRECISE LINE OF THE ROUTE USED AND SIGN IT***

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## Information

Under the provisions of the Wildlife and Countryside Act 1981, a modification order may be applied for by any person who wishes the definitive map to be amended by either the addition, deletion, upgrading or downgrading of a route. In addition, the accompanying definitive statement containing the particulars of a right of way may be varied. Claims can be based on usage (user evidence) and/or documentary evidence.

## User Evidence

Although a presumption of dedication can arise under common law, most claims involving user evidence are based on Section 31 of the Highways Act 1980, which states:

- (1) *"Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as a right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*
- (2) *The period of 20 years referred to in sub-section (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice or otherwise".*

As you will see, it is necessary under the Highways Act to show that the public have used the way **as of right** and **without interruption** for a period of 20 or more years, running retrospectively from the date when the public's right to use the way was first challenged. It is important that the way claimed follows a specific route and is not simply based on the public wandering at large. Landowners can successfully rebut a claim if they can prove that either the way was used with their express permission only, or that they have otherwise prevented the 20 year period from accruing by effectively restricting access, or by erecting notices to counter any suggestion that there was any intention to dedicate the route as a public right of way. They could also have given notice of their lack of intention to dedicate a right of way by making a formal declaration and depositing a plan with the Highway Authority.

In order to establish a claim, it is necessary to collect evidence from witnesses who can demonstrate a period of use which, when assessed with other users, shows a collective period of at least twenty years uninterrupted use of the way, believing that they had the right to do so.

- Evidence forms – **FORM E** – are included in this pack for that purpose.
- **FORM E (Stat)** is also available on request. This version of the user evidence form has a provision for a sworn statement (see 'Application forms' below).
- As many forms as possible should be submitted, with a marked map attached to each form, signed by the witness, indicating the exact route used. The witness should be aware that the completed form will be used to formulate a recommendation in a report to a Planning Committee. As such it would be designated a "background paper" and become available for public inspection. Ideally, the witness should be prepared to attend any future local Public Inquiry to support their evidence, if called upon to do so.

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In some cases the Highways Act will not apply – an example would be where the path crosses Crown Land or if there has been less than 20 years' use but the route has been used very frequently and by large numbers. In such cases Common Law will be relevant. The test is whether the public have been using the route for long enough (there is no specific period) and in such a manner that the landowner must have been aware that the public thought it was a right of way, yet did nothing to correct that impression.

### **Documentary Evidence**

With regard to claims based on documentary evidence, it is necessary to supply historical and archival information gleaned from documents such as Inclosure Awards, Tithe Maps, old Ordnance Survey maps etc. which, when considered with all other relevant evidence available, shows that a right of way that is not shown on the map and statement subsists or is reasonably alleged to subsist over land to which the map relates.

**N.B.** In the case of an application for an order to delete or change the status of a right of way it is necessary to show that the definitive map is wrong by the discovery of evidence which, when considered with other relevant evidence, clearly shows that a mistake was made when the right of way was first recorded. It is not for the Authority to demonstrate that the map is correct but for the applicant to show that an error was made.

**The applicant** will be the promoter of the application and will be required to support it through its various stages. If the process seems too burdensome, the Parish Council may be interested in assisting. It may be necessary to contact the applicant to carry out further investigations into the evidence, to answer queries, to serve required notices and, in the event of objections, to be called as a witness at a local Public Inquiry. The applicant's responsibility does not stop with the submission of the application form. However, should Dorset Council decide to make an Order, the necessary work to publish and defend it will be undertaken by the Authority.

### **Before you apply -**

We suggest that you **phone us** on 01305 224463 to discuss your application. It may help you avoid some pitfalls - and we can check our records to see if the route is already being claimed by anyone else or if it has existing public rights, give you guidance and provide you with maps of the area of your intended claim.

In addition you should

- Gather your evidence, both documentary and from users; and
- Identify all the owners and occupiers of all land to which the application relates (this includes anyone that has land next to the route in question and anyone who may have access along it).

***PLEASE ATTACH A MAP SHOWING THE PRECISE LINE OF THE ROUTE USED AND SIGN IT***

## Application forms

To apply formally for a modification order, you will need to complete the various forms attached:

**FORM A** Your application to be sent to the Definitive Map Team at the address at the top. Copies of documentary evidence you are relying on must be attached (photocopies or photographs). Form A must be accompanied by a map to show the route claimed – the regulations say that it has to be to a scale of not less than 1:25,000, but the larger the scale the better.

Notes for guidance are on the reverse.

**FORM B** A notice to be served on all affected owners and occupiers – notes for guidance on reverse. You may copy this form or request further copies if necessary.

**FORM C** A certificate, which tells Dorset Council that you have complied with the regulations requiring every owner and occupier of land to which the application relates to be notified of the application, i.e. that you have served Form B. (You should include anyone who has access along or from the claimed route.)

**FORM D** Fill this in if you are unable to establish whom any of the owners or occupiers affected are and have exhausted all avenues of inquiry as suggested. Dorset Council may authorise notices to be put up at the ends of the claimed route.

**FORM E** These are for your witnesses to complete. Please submit as many of these as possible with your application (within reason), each accompanied by a signed individual map of the route used. Further forms may be submitted after your application has been submitted if more witnesses come forward.

You may copy the blank forms if more are required or request a supply from us.

**FORM E Stat** This is available on request. (The form has a provision for a sworn statement and is useful if you have a good witness who either could not or would not attend any public inquiry.)

**FORM F** We advise that you send this to the landowner(s) with Form B.

**FORM G** This gives some guidance as to the historical documents that can be researched. You may wish to complete this to give an indication of the documents you have researched or to which you wish to draw our attention.

- If you speak to us to identify the claimed route we may supply maps of the area for you to copy as necessary.
- **Please try to ensure that the route claimed is accessible or links with another public highway or public destination at each end. If you are unsure please contact the Definitive Map Team on 01305 224463.**
- The Council is required to determine applications as soon as reasonably practicable and if it has not done so within a year the applicant may make representations to the Secretary of State. Unfortunately there is currently a large backlog of these claims awaiting investigation and any new application will have to be held on file for the time being.
- When your application is acknowledged we will also send you an outline of the procedures we follow.
- There is no charge for making a definitive map modification order application.

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**PLEASE ATTACH A MAP SHOWING THE PRECISE LINE OF THE ROUTE USED AND SIGN IT**

**APPLICATION FORM FOR A MODIFICATION TO  
THE COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY  
Wildlife and Countryside Act 1981**

**To: Definitive Map Team  
Dorset Council  
County Hall  
DORCHESTER  
Dorset DT1 1XJ**

**I/We (i)**

of (ii)

hereby apply for an order under Section 53(2) of the Wildlife and Countryside Act 1981 modifying the Definitive Map and Statement for the area by \*:-

- (a) **Deleting** the *footpath / bridleway / restricted byway / byway open to all traffic* \* which runs from: \_\_\_\_\_  
to: \_\_\_\_\_
- (b) **Adding** the *footpath / bridleway / restricted byway / byway open to all traffic* \* which runs from: \_\_\_\_\_  
to: \_\_\_\_\_
- (c) **Upgrading/downgrading** the *footpath / bridleway / restricted byway / byway open to all traffic* \* which runs from: \_\_\_\_\_  
to: \_\_\_\_\_  
to revised status: *footpath / bridleway / restricted byway / byway open to all traffic*
- (d) **Varying/adding** to the particulars relating to the *footpath / bridleway / restricted byway / byway open to all traffic* \*  
from: \_\_\_\_\_  
to: \_\_\_\_\_  
by providing that \_\_\_\_\_

**and shown on the map accompanying this application** (see overleaf).

**N.B. PLEASE DESCRIBE ROUTE AND STATE WIDTHS WHERE APPROPRIATE**

**I/We** attach copies of the following documentary evidence [including statements of witnesses] in support of this application:-

- (iii) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

- (i) Insert name of applicant(s)
- (ii) Insert address of applicant(s)
- (iii) Insert list of documents
- \* Delete as appropriate

**PLEASE ATTACH A MAP SHOWING THE PRECISE LINE OF THE ROUTE USED AND SIGN IT**

## NOTES FOR GUIDANCE

[Please read carefully]

### 1. TO THE APPLICANT

- 1.1 Schedule 14 to the Wildlife and Countryside Act 1981 establishes a procedure whereby applications may be made to the surveying authority (i.e. Dorset Council) for a modification to be made to the Definitive Map and Statement of rights of way. A number of forms are involved in the procedure and it is important that you comply with the various guidelines included with this pack to avoid invalidating your application.

### 2. APPLICATION FORM - FORM A

- 2.1 This form, correctly completed, describes the modification that is being sought for the map. You should read through all the options and decide which is the most appropriate. Definitions of the different types of right of way are given below. If (b) describes your proposed modification for example, you should cross through the other options and then complete (b) in full. An example is given below:

(b) **Adding the** ~~footpath / bridleway / restricted byway / byway open to all traffic~~ which runs  
from: Scratchy Face Lane, Newtown [SS 2345 6789]  
to: Cut Throat Lane, Poppington [SS 2376 6745]

### 2.2 Categories of Rights of Way

Footpath: A highway over which the public have a right on foot only, other than such a highway at the side of a public road.

Bridleway: A highway over which the public have a right of way on foot, pedal cycle and on horseback or leading a horse, with or without a right to drive animals of any description along the highway.

Restricted Byway: A highway over which the public have a right of way on foot, pedal cycle, on horseback or leading a horse, and using any vehicle other than a mechanically propelled vehicle (i.e. excludes using any motorised vehicle).

Byway (BOAT): A byway open to all traffic is a highway over which the public have a right of way for vehicular and all other kind of traffic, but which is used mainly as a footpath or bridleway.

Carriageway: A way over which the public have a right of way for the passage of vehicles (other than a cycle track).

### 2.3 Map

One of the most important requirements of this form is for a map, with the subject route of the application marked **clearly** and **precisely**. The scale of the map should be not less than 2½ inches to 1 mile, or 1:25,000. However, you are strongly advised to use a larger scale such as 1:10,000 or, ideally, 1:2,500. If you are submitting more than one application, a separate map will be required for each route.

### 2.4 Documentary Evidence

The Schedule requires that an application should be accompanied by **copies** of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application. Copies of documents should include certified photocopies (coloured photocopies where the originals are coloured or the detail unclear) or photographs. Exemption will be made where photocopying or photography is prohibited by the document custodian, but this should be confirmed in writing. The documents submitted in evidence should be listed, together with their sources and reference, on **FORM G**.

### 3. DETERMINATION OF APPLICATION

If the Council has not determined the application within 12 months of receipt of **FORM C** duly completed, the applicant may refer the matter to the Secretary of State and he, after consulting the Council, may direct the latter to determine the application within a specified period. Appeal may also be made to the Secretary of State within 28 days if Dorset Council decides not to make an Order.

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**NOTICE OF APPLICATION FOR A MODIFICATION TO  
THE COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY**

**Section 53(5) & Schedule 14 to the Wildlife and Countryside Act 1981**

**NOTES FOR GUIDANCE OVERLEAF - PLEASE READ CAREFULLY**

**Section A** To (i): .....

Of (ii): .....

**Section B** Notice is hereby given that on the ..... 20 .....

I/We (iii): .....

Of (iv): .....

have made an application to the Dorset Council that the Definitive Map and Statement for the area be modified by \*:

**Section C**

- (a) **Deleting** the *footpath / bridleway / restricted byway / byway open to all traffic\** which runs from: .....  
to: .....
- (b) **Adding** the *footpath / bridleway / restricted byway / byway open to all traffic\** which runs from: .....  
to: .....
- (c) **Upgrading/downgrading** to a *footpath / bridleway / restricted byway / byway open to all traffic\** the *footpath / bridleway / restricted byway / byway open to all traffic\** which runs from: .....  
to: .....  
to revised status: *footpath / bridleway / restricted byway / byway open to all traffic*
- (d) **Varying/adding to** the particulars relating to *the footpath / bridleway / restricted byway / byway open to all traffic\** which runs from: .....  
to: .....  
by providing that: .....

**Signed:** ..... **Dated:** .....

- (i) Insert name of landowner(s)
  - (ii) Insert address of landowner(s)
  - (iii) Insert your name(s)
  - (iv) Insert your address
- \* Delete as appropriate

## NOTES FOR GUIDANCE

[Please read carefully]

### 1. TO THE APPLICANT

- 1.1 These notes are for your guidance and help in applying to Dorset Council for an Order modifying the definitive map of public rights of way.
- 1.2 In order to comply with Paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 it is necessary for you, the applicant, to send one of these notices to all owners and occupiers of the land over which the application route passes, adjacent owners should also be informed if reasonably possible. If you do not know the names and addresses of all the owners and occupiers you may apply to the Definitive Map Team, Dorset Council, County Hall, Dorchester DT1 1XJ for permission to post a notice at each end of the path concerned. Every effort should be made to identify all interested parties.
- 1.3 Once notice has been served on all the owners and occupiers affected you should complete the Certificate of Service of Notice of Application, **FORM C**, sign and date the form, and return it to the address given at the top of **FORM A**. Guidance on how to complete the Notice of Application is given below:

### 2. Section A

- 2.1 The name and address of the individual affected by the proposal should be entered in this section. Please include all properties adjoining the route, as they are affected. Separate notices should be sent to all interested parties, and a list of names and addresses of all those on whom notice was served should be included on **FORM C**.

### 3. Section B

- 3.1 The date on **FORM A** of your modification application form should be entered in this section, together with your name and address.

### 4. Section C

- 4.1 This section describes the modification being requested. You should read through all the options and decide which is the most appropriate. If (b) describes your proposed modification for example, you should cross through the other options and then complete (b) in full. An example is given below:

(b) **Adding** the ~~footpath / bridleway / restricted byway / byway open to all traffic~~ which runs  
from: Scratchy Face Lane, Newtown [SS 2345 6789]  
to: Cut Throat Lane, Little Poppington [SS 2376 6745]

The completed form should be signed and dated by the applicant and sent to the individual named in **Section A**.

### 5. TO THE RECIPIENT

- 5.1 If you should receive a Notice of Application for a Modification Order it means that someone is proposing a change to the record of public rights of way on land in which you may have an interest. Dorset Council will contact you to discuss the proposal, but not immediately. If you have any queries relating to the application, please contact the Definitive Map Team, Dorset Council, County Hall, Dorchester DT1 1XJ (Tel. 01305 224463).

**PLEASE ATTACH A MAP SHOWING THE PRECISE LINE OF THE ROUTE USED AND SIGN IT**

**CERTIFICATE OF SERVICE OF NOTICE OF APPLICATION FOR MODIFICATION ORDER  
THE COUNTY OF DORSET DEFINITIVE MAP AND STATEMENT OF RIGHTS OF WAY**

**Wildlife and Countryside Act 1981**

**To:** Definitive Map Team  
Dorset Council  
County Hall  
Colliton Park  
DORCHESTER  
Dorset  
DT1 1XJ

**I/We(i)** .....

of (ii) .....

hereby certify that the requirements of paragraph 2 of Schedule 14 to the Wildlife and Countryside Act 1981 have been complied with in relation to the attached application.

Signed: ..... Date: .....

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**NOTES FOR GUIDANCE**

**This certificate should be completed only when notice of the application has been served on all owners and occupiers affected by the proposal. A list of the names and addresses of all individuals notified should be provided below. Please indicate if you have been unable to identify all owners and occupiers of any land to which the application relates.**

**Notice of Application Sent To:**

|    | <b>Name</b> | <b>Address</b> |
|----|-------------|----------------|
| 1. | .....       | .....          |
| 2. | .....       | .....          |
| 3. | .....       | .....          |
| 4. | .....       | .....          |
| 5. | .....       | .....          |
| 6. | .....       | .....          |

(i) Insert name of applicant(s)      (ii) Insert address of applicant(s)

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**PLEASE ATTACH A MAP SHOWING THE PRECISE LINE OF THE ROUTE USED AND SIGN IT**

**APPLICATION FOR PERMISSION TO NOTIFY LANDOWNERS  
BY SITE NOTICE****Wildlife and Countryside Act 1981**

**To:** Definitive Map Team  
Dorset Council  
County Hall  
Colliton Park  
DORCHESTER  
Dorset  
DT1 1XJ

**PATH LOCATION DETAILS:****PARISH:** ..... **DISTRICT:** .....**CLAIMED STATUS OF WAY:** Footpath / Bridleway / Restricted byway / Byway Open to All Traffic [*delete as appropriate*].**DESCRIPTION OF PATH** [*include a map*]:**FROM:** .....**TO:** .....**CURRENT RECORDED STATUS ON DEFINITIVE MAP:** No status recorded / Footpath / Bridleway / Restricted Byway / Byway Open To All Traffic [*delete as appropriate*]**I/WE** (i) .....

of (ii) .....

I have carried out an investigation in an attempt to discover the owners and occupiers of the land affected by the application. I have made enquiries of: [*delete those that are not applicable*].

- \* Adjoining landowners
- \* Local inhabitants
- \* Post Office
- \* Parish Council
- \* Register of Electors
- \* Land Registry
- \* Other appropriate sources [*please state*].

I have been unable to discover ownership of the land, and I request Dorset Council to direct that Notice may be served by posting said Notices at either end of the way claimed.

**Signed:** ..... **Date:** .....

(i) Insert name of applicant(s)

(ii) Insert address of applicant(s)

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NOTES

**APPLICATION FOR PERMISSION TO NOTIFY  
LANDOWNERS BY SITE NOTICE**

**Wildlife and Countryside Act 1981**

1. It is a requirement of Para 2 of Schedule 14 to the Wildlife and Countryside Act 1981 that an applicant for a modification order shall serve a Notice on every owner and occupier of any land to which the application relates stating that the application has been made.
2. The form of Notice, defined by the regulations, is set out in Dorset Council's **FORM B**, which should be addressed and sent to every owner and occupier of any land to which the application relates.
3. It is the duty of the applicant to investigate the ownership and occupation of the land so that the necessary Notice may be served.
4. Where it proves impossible for the applicant to discover the owner and occupier, **if after reasonable enquiries have been made**, Dorset Council is satisfied that it is not practicable to ascertain the name and address of all the owners or occupiers, the Council may direct that the Notice may be served by addressing it to the owner or occupier of the land [describing it] and by affixing it to some conspicuous object or objects at either end of the route concerned.
5. Before the Council can direct that a Notice be posted on the land, the Council must be satisfied that reasonable enquiries have been made. The applicant must, therefore, give details of the enquiries made, which may be conveniently done by completing the details overleaf [**FORM D**].
6. Failure to serve Notice on any owner and occupier may invalidate the application.



**PUBLIC RIGHTS OF WAY DOCUMENTARY EVIDENCE CHECKLIST**

**Wildlife and Countryside Act 1981**

To: Definitive Map Team  
**Dorset Council**  
**County Hall**  
**Colliton Park**  
**DORCHESTER**  
**Dorset**  
**DT1 1XJ**

**PATH DETAILS:-**

**PARISH:** \_\_\_\_\_ **DISTRICT:** \_\_\_\_\_

**BELIEVED STATUS OF PATH:** footpath / bridleway / restricted byway / byway open to all traffic [*delete as appropriate*]

**DESCRIPTION OF PATH** [*please indicate route on a map - 1:2500 scale if possible*]

**FROM:** \_\_\_\_\_

**TO:** \_\_\_\_\_

**I/We** (i) \_\_\_\_\_

of (ii) \_\_\_\_\_

have carried out research at the Dorset History Centre (former County Records Office) and/or Public Records Office and wish the following documents to be considered in support of my application [see notes on reverse of **FORM A**]:

**Document**

**Dorset History Centre/  
National Archives Reference**

Inclosure Award and Map\*  
 Tithe Apportionment and Map\*  
 Finance Act 1910 Maps, field books and valuation books\*  
 Ordnance Survey Maps and records\*  
 Railway/Canal Survey Maps and Schedules\*  
 Estate Maps and Records\*  
 Quarter Session Rolls\*  
 Sale Catalogues\*  
 Highway Board Minute Books\*  
 Others [*please state*].

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(i) Insert name of applicant(s)      (ii) Insert address of applicant(s)      \* Delete as appropriate

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