

Procedure and Policy for Definitive Map Modification Orders

Introduction

This policy has been devised having regard to the Wildlife and Countryside Act 1981, in particular Section 53 and Schedule 14. Additional guidance is provided in the Welsh Office Circular 5/93.

Background

The Definitive Map and Statements (DMS) are an extremely important record of PRoW. These records are held and maintained by Gwynedd Council's Rights of Way Section. The Statement, which accompanies the Definitive Map, may contain a description of the position and width of a path or any limitation or condition affecting the right of way. Together, they provide conclusive evidence as to the existence and status of the public right of way shown.

Under the provisions of the Wildlife and Countryside Act 1981, Gwynedd Council as Surveying Authority has a duty to keep the DMS under continuous review.

Continuous review, in essence, means that when evidence becomes available that there is an error, inaccuracy or omission on the DMS, that the DMS should be modified as soon as is reasonably practicable by means of a legal order (known as Definitive Map Modification Order [DMMO]).

Thus, a Surveying Authority can make a DMMO whenever it discovers new evidence which requires the map to be amended. But in addition to this, any person may apply to the Surveying Authority for a DMMO to be made. Landowners may, for example, believe that a path recorded on the Definitive Map is not public, or that a public right of way is shown on the incorrect line or has the wrong status. Likewise, there are often cases where paths not recorded on the Definitive Map actually exist on the ground, and may have been openly used and enjoyed by the public for a considerable time. In such cases there may be a basis for that route to be added to the legal record, if public rights have been established.

Whoever seeks a DMMO, the same basic principle applies. The most important of these is the need for factual evidence and whether or not public rights exist. There are two main types of evidence which applicants should seek when making an application – *evidence of use* and/or *documentary evidence* such as historical maps and records. Evidence will need to be well-founded and convincing – merely asserting that a right of way exists without supporting evidence is unlikely to result in an Order being made. The whole exercise is concerned with resolving uncertainty over what rights actually exist

not what rights are desirable from any particular viewpoint. See Appendix 3 for a list of the type of evidence required.

In order to achieve the correct results, consistent with facts and legislation, officers investigating such claims undertake thorough and detailed research into the relevant evidence, in each case, making a substantial commitment in time and resources.

Although not stated explicitly, the legislation envisages that claims will be determined within 12 months. It does this by providing that an applicant may apply to the Planning Inspectorate for a direction requiring the local authority to determine a claim if it has not done so within 12 months of the date of receipt of the completed application. The Planning Inspectorate will have regard to the Council's policy for dealing with DMMO's in considering requests for direction.

Due to the complexity of researching such applications, this 12 month period is frequently exceeded. In addition, there is a backlog of Definitive Map and other legal order work facing the Council's Rights of Way Section. As a result, there are a number of applications which have been received but not yet determined a number of years after receipt.

A further material consideration is the Countryside and Rights of Way Act 2000 (CROW Act). In order to bring some certainty to users of the countryside and landowners about what rights actually exist, a cut-off date of 1st January, 2026 has been introduced, after which it will not be possible to apply for footpaths, bridleways or higher rights to be included on the Definitive Map based purely on historical documentary evidence (historical is classed as pre-1949). Thus after this date it will only be possible to claim rights based on user evidence. However, it is envisaged that the backlog will grow due to an anticipated increase in DMMO applications as 2026 approaches.

The Natural Environment and Rural Communities (NERC) Act 2006 extinguished every public right of way for mechanically propelled vehicles unless that way i) was already shown on a Definitive Map and Statement as a Byway Open to All Traffic (BOAT) or ii) was subject to one of a number of exemptions contained in Sections 67(2) or 67(3). One of these exceptions is if the right to use motorised vehicles had come into existence prior to 1930. Another would be if the main use in the period of 5 years before 11th May, 2006 was by motorised vehicles.

3.0 The Policy

3.1 Form of Application

In accordance with paragraphs 1 and 2 of Schedule 14 of the 1981 Act (see Appendix 1), all applications shall be made in the prescribed form and shall be accompanied by a map to a scale of not less than 1:25000 showing the way or ways to which the application relates.

It shall include copies of all documentary evidence (including statements of witnesses) which the applicant wishes to offer in support of the application, even if the documents are already in the possession of the Council.

The applicant shall serve notice on every owner and occupier of the land covered by the application. The notice shall state that the application has been made. If the applicant does not know the name and address of the owner or occupiers, he shall make reasonable inquiries. If the reasonable inquiries do not discover the name and address of the owner or occupiers, the applicant shall inform the Council of this fact and describe the inquiries made. At its discretion, the Council may allow the applicant to serve the notice by addressing it to “the Owner” or “the Occupier”, as appropriate, and fixing it to a conspicuous object or objects on the land. When the notice has been given to the owner or occupier the applicant shall certify that to the Council in the prescribed form.

The Council will provide all the necessary documentation to enable an application to be made in the prescribed form.

The number of evidence statements which an applicant needs to submit is not specified in the relevant legislation, although Gwynedd Council generally regards 7 statements as being desirable.

The Council will not investigate the application until all these preliminary steps have been complied with. Any application that is not in the prescribed form with copies of supporting evidence, as set out in paragraphs 1 and 2 of Schedule 14, will normally be returned to the applicant with an explanation of its formal deficiencies.

3.2 Register of DMMO applications

Within 28 days of the receipt of a valid application, the Council will record the application on its register of DMMO claims which the Council is required to keep and maintain under Section 53B of the 1981 Act.

3.3 Priority for dealing with applications

The Council will determine a valid application as soon as possible and will endeavour to do so within 12 months of receiving it.

DMMO applications will normally be assessed by the PRoW Section and priority given in accordance with the following criteria:

- (i) the good use of public resources
- (ii) the degree of public benefit
- (iii) obstruction of the route
- (iv) the likelihood of the land over which the route runs being developed

- (v) clarity of the evidence submitted
- (vi) where a substantial proportion of the user witnesses are elderly
- (vii) expediency in order to facilitate the resolution of rights of way
- (viii) the availability of nearby alternative routes which offer the user a similar or enhanced experience to the claimed route.

3.4 Consideration of the evidence

If an application meets the formal requirements but a brief investigation of the evidence accompanying it shows that there is no reasonable prospect of it succeeding on the evidence submitted then the application will normally be rejected with an explanation of the further evidence which would be required for it to be reconsidered.

Where there is incontrovertible evidence that the landowner had no intention during the claim period to dedicate the way to the public, for example by the landowner complying with Section 31(6) of the Highways Act 1980, then the decision should be that no right of way as claimed subsists and the application will thus be rejected.

If, however, an application has a reasonable prospect of succeeding on the basis of the evidence submitted, officers will investigate that evidence, together with all other relevant evidence available to the Authority.

In investigating the application, a preliminary consultation will be conducted with the Community/Town Council and other relevant organisations (e.g. Rambler's Association, Local Member).

A summary of the evidence contained in the application will be submitted to all "owners" or "occupiers" asking if they wish to make objections or any representations regarding the application. A reasonable time will be allowed for any such representations or objections to be made.

If user evidence is corroborated by other evidence, there may be no need for interviews to be undertaken by officers. However, if there is evidence casting doubt upon the user evidence (such as contradictory evidence from a landowner) then interviews of the landowner and a selection of user witnesses by an officer may be appropriate to determine whether the Authority should proceed with the application.

3.5 Determination of the application

Having considered all the evidence and representations made, a report will be prepared and submitted in accordance with the Council's Rights of Way Delegation Scheme (see Appendix 2).

When the Council has determined the application, the applicant and the landowner or occupiers who were served with the Notice of Application will be notified of the decision.

If the Council decide to refuse the application and not to make any Order, the applicant has 28 days from service of the Notice of Decision to appeal to the Planning Inspectorate, who will appoint an Inspector to consider the appeal.

If, after 28 days, no appeal has been made, the file can be closed.

If the Council decide that a DMMO should be made, officers will, as soon as reasonably practicable, implement this decision.

3.6 Publication of DMMO

If the Council decide to grant an application, an Order will be made and published in a local newspaper and posted on site. The owners and occupiers of land affected and the Community/Town Council will also be served with a copy of the Order. There will be a period of not less than 42 days for representations and objections to be made.

If there are no such representations and objections the Council will confirm the Order. If there are representations or objections or any amendment to the Order is necessary then the matter will be referred to the Planning Inspectorate who will appoint an Inspector to consider the issues and evidence in the form of written submissions or a public inquiry. He may then confirm the Order with or without alterations to it.

The Council will inform the applicant whether or not the application can be confirmed.

When an Order is confirmed, a Notice will be published in a local newspaper and posted on site and all interested parties will be notified. Any person aggrieved by the confirmation of an Order may question its validity in the High Court within 42 days of the notification. The grounds for such an application must be that the Order is not within the powers of the 1981 Act or that the Act has not been complied with. The High Court may quash an Order in whole or in part if it is satisfied that this is the case.

If the Modification Order is confirmed and not quashed by the High Court, it will become part of the DMS for the area and read with it as one document. A separate Legal Event Order (LEO) is required to effect a change on the Definitive Map and Statement. This will be undertaken by the Council at its own expense. The Ordnance Survey is automatically provided with a copy of the Order so that they can take the changes into account on the next edition of their relevant maps.

Other than signposting and waymarking there will normally be little effect on the ground. There will be no change in landownership and the Authority is not

obliged to accept any liability for maintenance. If, however, the route is obstructed, steps will be taken to remove the obstruction.

3.7 Guidance

The Council has produced guidance notes to assist applicants which will be provided free of charge to anyone who seeks to make an application to modify the DMS.

The guidance notes are also available on the Council's website.

The Council recognises that the procedures set out in the policy may need to be amended in the light of experience and any subsequent representations that might be received following its implementation. The policy will be updated periodically to reflect current judicial decisions.

Where the Council has a policy as outlined above it will consider in appropriate cases whether an exception should be made on its merits.

SCHEDULE 14 APPLICATIONS FOR CERTAIN ORDERS UNDER PART III

Form of applications

- 1 An application shall be made in the prescribed form and shall be accompanied by —
- (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and
 - (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

Notice of applications

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

Determination by authority

- 3(1) As soon as reasonably practicable after receiving a certificate under paragraph 2(3), the authority shall—
- (a) investigate the matters stated in the application; and
 - (b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the Order to which the application relates.
- 3(2) If the authority have not determined the application within twelve months of their receiving a certificate under paragraph 2(3), then, on the applicant making representations to the Secretary of State, the Secretary of State may, after consulting with the authority, direct the authority to determine the application before the expiration of such period as may be specified in the direction.
- 3(3) As soon as practicable after determining the application, the authority shall give notice of their decision by serving a copy of it on the applicant and any person on whom notice of the application was required to be served under paragraph 2(1).

Appeal against a decision not to make an Order

- 4(1) Where the authority decide not to make an Order, the applicant may, at any time within 28 days after service on him of notice of the decision, serve notice of appeal against that decision on the Secretary of State and the authority.
- 4(2) If on considering the appeal the Secretary of State considers that an Order should be made, he shall give to the authority such directions as appear to him necessary for the purpose.

Appendix 2

GWYNEDD RIGHTS OF WAY DELEGATION SCHEME

All functions relating to rights of way as contained within the following Acts as amended and including all subordinate legislation are delegated to the Head of Regulatory Department (Planning, Transportation and Public Protection):

- National Parks and Access to Countryside Act 1949;
- Countryside Act 1968;
- Highways Act 1980;
- Wildlife and Countryside Act 1981;
- Road Traffic Regulation Act 1984;
- Cycle Tracks Act 1984;
- Countryside and Rights of Way Act 2000;
- Clean Neighbourhoods and Environment Act 2005 (gating Orders)
- Natural Environment and Rural Communities Act 2006 – part 6

NB The above provides that *the determination of all applications with regard to, and decisions to confirm, rights of way Orders are delegated to the Head of Regulatory Department (Planning, Transportation and Public Protection) with the exception of the following:*

- i Applications submitted by serving Members or staff of the Regulatory Department.
- ii Applications involving land owned by the Council.
- iii Decisions to submit Orders made under the Highways Act 1980, where objections are received to the Order and are not withdrawn, to the National Assembly for confirmation
- iv Applications which the Head of the Regulatory Department (Planning, Transportation and Public Protection) considers should be referred to Committee.
- v Applications for Orders made under the Highways Act 1980 where the Councillor in whose ward a proposed Order is located submits a written request to the Head of the Regulatory Department (Planning, Transportation and Public Protection) within the established time scale for consultation that the matter should be decided by the Area Committee. The prescribed period for notification shall be 16 calendar days from the date of the letter of consultation regarding the proposal.

Appendix 3

Evidence Required – Documentary

An Inspector conducting a Public Inquiry to determine whether a Public Right of Way has been established over land, will expect the following to have been researched and copies supplied (where relevant) as a matter of course:

Mapping, ranging from First Edition Ordnance Survey (c.1835) to the latest relevant edition, including both large and small scale mapping

Old County and private maps

Tithe Map and Schedule

Enclosure Awards and Schedule

1910 Finance Act maps and Schedule

Relevant private Bills or Acts of Parliament or Orders (e.g. railway) plans and schedules.

Relevant Guide books, maps and leaflets

Relevant copies of County, District and Parish or Community Council minutes

Title deeds

Court Judgements

Dated photographs

Relevant correspondence (e.g. between landowners and tenants or alleged trespassers)

Any other documentary evidence that may exist which is relevant to the matter

User Evidence

An Inspector will normally expect to be able to question those supplying user evidence and for those people to be subject to cross-examination. Evidence not subject to this test may be discarded or degraded.

Statements on prescribed forms

Sworn Affidavits

Relevant, dated photographs or other media

Recordings of interviews with users

Note: Failure to produce as much relevant evidence as is applicable in each case, may seriously delay consideration and determination of any application. It is therefore in the applicant's interest to make the best case possible in order to achieve a speedy and successful outcome.

Procedure and Policy for Public Path Diversion and Extinguishment Orders

4.0 Introduction

This policy has been devised having regard to the Highways Act 1980, in particular Public Path Orders (PPO's) made under Sections 118 and 119. This policy does not cover Creation Agreements and Orders made under Sections 25 and 26 respectively, nor does it cover the use of Section 116 through the Magistrates Court.

If a path needs to be diverted or extinguished for development to take place, a legal order must be made under the Town and Country Planning Act 1990 before development is completed. This policy document does not apply in these cases.

4.1 Background

Under Section 118 of the Highways Act 1980, any person may make an application to the Highway Authority to extinguish a footpath, bridleway or restricted byway on the grounds that it is not needed for public use.

In accordance with the provisions of Section 119 of the Highways Act 1980, any person may make an application to the Highway Authority to divert a footpath, bridleway or restricted byway where such proposals are in the interests of the owner, occupier or lessee of the land over which the right of way runs with or without an interest to the public at large.

Other legislation makes provision for diversions and extinguishments of rights of way in a number of additional circumstances e.g. for the protection of schools, for the purposes of crime prevention in certain areas, to protect Sites of Special Scientific Interest (SSSI's) or in the interest of public safety where rights of way cross railway lines. Such provisions are listed in Appendix 1.

It should be noted that path diversions and extinguishments are *powers* of the Highway Authority and not a *statutory duty*. However, applicants may have a right to apply for some types of applications.

It should be noted that proposals for path diversions must have regard to the needs of the mobility of disabled or blind persons who may use the path.

It should be noted that the Council does not generally support applications for Extinguishment Orders unless they are part of a wider package with compensating public benefit. The Council will accept stand-alone applications for extinguishments only in exceptional circumstances.

4.2 Application criteria

It is essential that any application meets the legislative/application criteria prior to being submitted. Applicants are strongly advised to discuss their case with the Area Rights of Way Officer in the first instance. The Council will only exercise its discretion to make an Order if it is satisfied that the Order is capable of being confirmed (i.e. it believes the legislative tests are met).

The legislative tests that a particular application must meet depend upon the type of Order being sought (see Appendix 1).

The Council has produced a set of guidance notes in relation to diversions which can be supplied free of charge to any potential applicant. The guidance notes expand on and are in addition to the tests set out in the legislation. These notes are provided in Appendix 2 of this policy.

It is highly recommended that applicants pay particular attention to these guidance notes prior to submitting an application.

The existing route must be clear of obstructions prior to any application being submitted, and clear of obstructions until the Order is confirmed and the new route is available for use (this requirement may be waived in circumstances when a route is obstructed by a significant and/or historic obstruction, e.g. a building or expanse of water).

It should be noted that it is unlawful under both common law and statute law for any person, without lawful authority or excuse, in any way to wilfully obstruct the free passage along a highway.

4.3 Making an application

Applicants for path diversions or extinguishments will be given the relevant application form to complete.

As part of the application, the applicant is required to submit two plans illustrating the proposal and landownership details. Plans may be supplied by the Council upon request.

Written consent must be obtained from all landowners and occupiers who will be affected by a proposed diversion. A copy of the consent must be submitted with the application.

Applicants for both diversions and extinguishments will be expected to:-

- agree in writing to meet administrative costs associated with making the Order (as per fee structure – see Appendix 3) and the actual cost of advertising the Diversion Order in the local press;
- agree in writing to pay any compensation which becomes payable in consequence of the coming into operation of the Order;
- agree in writing to pay all costs to set out any new line of the path on the ground;

All applications must be accompanied with an advanced, non-returnable payment of (£200) towards these costs.

The Council will not commence the procedures until all these preliminary steps have been complied with. Any incomplete application will normally be returned to the applicant with an explanation of its deficiencies.

It should be noted that the administrative and advertising costs incurred are payable whether the Order is successful or not.

In cases where, in the opinion of the Council's Rights of Way Section, there is significant public benefit, consideration will be given to waive all or part of the costs associated with the processing of an application for a PPO. Where the Council instigates an Order, the relevant department/section will meet the costs of processing the application.

4.4 Priority for dealing with applications

Applications will normally be dealt with in chronological order of receipt. However, the Council reserves the right to prioritise some applications out of sequence where other criteria are relevant. Examples of such relevant criteria may include:-

- The avoidance of imminent danger to the public where other remedial health and safety action is not appropriate.
- The opening up of a path blocked by a long term obstruction.
- The moving of a path to materially increase public enjoyment (for example, by providing better views or opportunities to observe wildlife or to avoid permanent water logging).
- The removal of a real sense of invasion of privacy for the public (not just a perceived one by the applicant) where this is a serious

deterrent to use which it has not been possible to overcome through clear signing and way marking.

- The opening up of the network by the provision of an important link to the rest of the network not provided by the existing path.

4.5 Determining the application

Upon receipt of a valid application, a site visit will usually be arranged by the Rights of Way Officer. The site meeting is an ideal opportunity to view the definitive line of the Right of Way and consider the proposal. The Officer will usually give advice about the suitability of the proposal, statutory requirements and whether or not the applicant will be required to do any works on the ground for example to bring a diverted route up to a suitable standard.

The Officer cannot make the decision whether or not to make a Diversion or Extinguishment Order, but they can advise on the likelihood of its success.

Following the visit, the Rights of Way Officer will form a preliminary judgement as to whether the application satisfies the criteria contained within the relevant legislation.

If the Rights of Way Officer is satisfied that the application meets the relevant criteria, the Council will undertake a preliminary consultation with the relevant Community or Town Council, the Snowdonia National Park Authority (where applicable), landowners, interest groups and Statutory Undertakers. This, it is hoped, will encourage better dialogue between all interested parties and the Authority and also help to minimise the risk of objections if an Order is made. In addition to the above consultation, the officer will consult with the Local Member for the area.

However, if after carrying out the preliminary consultation, objections are received, then officers will either:-

- a) Enter into discussions with the objector(s) in an attempt to resolve the objections and/or have the objection(s) withdrawn, and/or
- b) Enter into discussion with the applicant in an attempt to find a more acceptable route for the proposed diversion.

If, after the additional consultations, it is not possible to resolve the objection(s) or have them withdrawn and the applicant cannot or will not provide an alternative route, then a report will be prepared and submitted in accordance with the Council's Rights of Way Delegation Scheme (see Appendix 4).

4.6 Making and publishing the Order

If the Council decides that a PPO should be made, the Rights of Way Officer will, as soon as reasonably practicable, implement this decision.

The Order will be advertised in a local newspaper and at the relevant points on site, with a copy of the Order sent to the applicant, occupier of the land, Community or Town Council and other prescribed bodies specified in the Welsh Office Circular 5/93.

If no objections are received within 28 days, or any that are received are subsequently withdrawn, the Council will confirm the Order.

If any objections are made, they may be copied to the applicant, so that the applicant may, if he wishes, negotiate with the objectors with a view to resolving the objections.

If any objections are received and are not subsequently withdrawn, the Council cannot confirm the Order, but will refer it to its Area Committee who will determine whether or not to refer the Order to the Planning Inspectorate for determination. In such cases, the Order will be determined by written representation, a hearing or a Public Inquiry.

The Council will inform the applicant whether or not the application can be confirmed.

When an Order is confirmed, a Notice will be published in a local newspaper and posted on site and all interested parties will be notified. Any person aggrieved by the confirmation of an Order may question its validity in the High Court within 42 days of the notification. The grounds for such an application must be that the Order is not within the powers of the Highways Act 1980 or that the Act has not been complied with. The High Court may quash an Order in whole or in part if it is satisfied that this is the case.

If the Council has specified that physical works are required in order to bring the new route up to a suitable standard, such work must be completed before the Order comes into force. The work will be inspected and if satisfactory, certified by an officer from the Rights of Way Section.

If the works are not satisfactorily completed, the Council may undertake the work itself and recover the cost of doing so from the applicant.

After the work has been completed and the Order has come into force, the applicant will be invoiced for any outstanding costs. The new route will be signposted (where applicable) where it leaves a maintained highway, and "Diversion" signs will be placed at the points where the public will encounter the old (closed) route, directing them to the new route. These signs are to remain in position for a minimum of 5 years to inform path users before Ordnance Survey maps are amended, and those using older edition maps.

The result of a PPO is to change a route on the ground. A separate Legal Event Order (LEO) is required to effect a change on the Definitive Map and Statement.

This will be undertaken by the Council at its own expense. The Ordnance Survey is automatically provided with a copy of the Order so that they can take the changes into account on the next edition of their relevant maps.

Appendix 1

Legislative Tests

The legislative test that a particular application must meet depends upon the type of Order being sought. This policy applies to the following types of Order:

- **Public Path Extinguishment Order - Section 118 Highways Act 1980:** A right of way may be extinguished where it is not needed for public use.
- **Public Path Diversion Order - Section 119 Highways Act 1980:** A right of way may be diverted where it can be shown that it is in the interest of the relevant landowner and/or the public to do so, but only where:
 - i) the diverted route would not be substantially less convenient to the public; and
 - ii) the diversion would not alter any point of termination of the path, other than to another point on the same highway, or a connected highway.

The effect the diversion would have on public enjoyment of the path as a whole must also be taken into account before a decision is made.

- **Rail Crossing Extinguishment / Diversion Order - Section 118A / 119A Highways Act 1980:** A right of way which crosses a railway may be extinguished (Section 118A) or diverted (Section 119A) where it can be shown that it is expedient to do so in the interests of public safety, but only if it is not possible to make the crossing safe.
- **Special Extinguishment / Diversion Order - Section 118B / 119B Highways Act 1980:** Extinguishments (118B) or diversion (119B) of certain highways for the purposes of crime prevention in designated areas.
- **Special Extinguishment / Diversion Order – Section 118C / 119C Highways Act 1980:** Certain highways may be extinguished (Section 118C) or diverted (Section 119C) for reasons of school security {for the purpose of protecting pupils and staff from violence; threat of violence; harassment; alarm or distress arising from unlawful activity; any other risk to their health and safety arising from such activity}.
- **SSSI Diversion Order - Section 119D Highways Act 1980:** A right of way may be diverted in order to protect a Site of Special Scientific Interest.
- **Section 118ZA / 119ZA Highways Act 1980:** Extinguishment (118ZA) or diversion (119ZA) of paths made in the interest of owners, lessees or occupiers of land used for agriculture, forestry or the breeding or keeping of horses.

Appendix 2

Part I - The Process

The route of a public right of way should not be moved unless the change has first been authorised by a legal order, known as a diversion order. This guidance explains how to apply to Gwynedd Council for permission to move a footpath, bridleway or restricted byway. Different rules apply to the diversion of a byway open to all traffic.

When can a path be diverted?

A diversion will only be granted if the proposal meets certain requirements, which are set out in the Highways Act 1980. The proposed diversion must be in the interests of the owner, occupier, or lessee of the land crossed by the right of way, or in the interests of the public and the new route must not be substantially less convenient to the public. Above all, it must be expedient to have the diversion. In deciding whether it is expedient, we will take into account the public's enjoyment of the whole path and the effect of the diversion on other land. The Snowdonia National Park also has power to divert paths to enable development to take place within their area.

We can also make diversion orders to improve school security and to reduce crime, but we would like these to be discussed with us before an application is made, as different considerations apply.

Who can apply?

Anyone can apply for a diversion, but we would be most unlikely to agree to a diversion without the consent of the owners and occupiers of the land crossed by the old and new routes, and evidence of that consent will be required with the application.

How long does it take?

We hope to make our decision on an application within six months (it takes this long because we need time to consult others about the proposal). Even where we agree to make an order, it will take at least a further six months before the legal processes are complete. If the order is contested, it can take considerably longer. Remember, this work is a *power* and not a *duty* and is therefore subject to the Unit's workload at the time of the application, and the staff resources available to it.

What does it cost?

The diversion cannot be completed until the new path is put into good condition. We will specify any work that needs to be done before we make a diversion order but, if the diversion proceeds, the applicant must carry out the work, to our satisfaction, at his own expense. We have the power to do the necessary work and recover the cost from the applicant if he fails to do so.

We charge the applicant for the time we spend processing an application before an order is made as listed below and for the actual cost of advertising the diversion in the local press (approximately £1,000, depending on the length of the advertisement and the newspaper concerned).

Current fee structure

An applicant may be required to pay compensation to anyone whose land is devalued as a result of the diversion.

We can require an applicant to enter into an agreement with us to pay these costs and expenses.

Who decides whether a path should be diverted?

Initially, we do. The case officer will make a recommendation to the Council under the Delegation scheme who will decide whether or not a diversion order should be made. However, the making of an order is a public process, and if we receive objections to the order we may decline to take the matter further, or we may refer it to the Secretary of State for a decision. This may result in a public inquiry, or hearing, or be dealt with by way of written representations.

Please note that we do not have to make a diversion order, even if it complies with the requirements of the legislation. We hope that, by providing advice in Part II of this guidance, applicants will be encouraged to propose diversions which improve the network, or offer the public better access opportunities. We reserve the right not to agree to diversions that do not do so. We will, however, consider all applications and give reasons for our decision.

First steps

Applicants are strongly advised to discuss their case with the Rights of Way Office in the first case.

1. We recommend that anyone thinking of moving a public right of way first finds out the correct, legal line of the path (this may not be exactly how the path is used in practice). The most up to date information about the rights of way network is available at our offices in Caernarfon, Pwllheli and Dolgellau. Each public right of way is uniquely referenced by the name of the Community in which it is located, and a number. We will need this information to process an application.

2. The proposed new line of the path should be planned using the Part II guidance. We can provide informal advice at this stage in order that an application has the best possible chance of success. We can also advise at an early stage if the proposal is unlikely to succeed. The initial contact is the Senior Rights of Way Officer for the appropriate Area.

3. It makes sense to consult with local residents and users of the route before submitting a formal proposal to the Council, so that their views can be canvassed at an early stage, thereby reducing the chances of objections after the application fee has been paid.

4. Erect a notice beside the section to be diverted, explaining the proposed diversion and seeking comments and suggestions from those who use the route. Include a large scale plan showing the current rights of way network in the area (we may be able to assist in this respect).

5. Contact local representatives of interest user groups and ask for their input. We will be able to supply contact details for representatives of the Ramblers' Association, the Open Spaces Society and the Community Council, and also the British Horse Society and Cyclists Touring Club (in the case of bridleways) and the British Driving Society (in the case of restricted byways).

The application

We will provide copies of the application form, which should be sent to us once the proposal has been finalised, together with a map showing the proposed diversion.

Part II - Choosing a new route

This part of the guidance is intended to help applicants promote a diversion which provides the best possible alternative route for public use and an application which is, therefore, more likely to be approved. It is also intended to discourage the making of applications that stand little or no prospect of success.

We recognise that the needs and aspirations of the users of a path need to be taken into account when a path is diverted as well as those of the land owner and/or manager. We will consider both and we will also have regard to our Rights of Way Improvement Plan, which informs the way in which we manage the network of public rights of way. These are the result of research and consultation with local residents, access user groups, farmers and land managers.

We recognise that different users have different needs and not everyone using the rights of way network will agree on the qualities which make it special. We have consulted a number of people and organisations with different interests and have sought to draw out the most obvious issues of concern. The guidance is not intended to be prescriptive, because the overall quality of an application will be a combination of many different factors. These might include:

- the quality of the user's experience of the existing route and the proposed new route, in terms of surface, gradient and views,

- the importance of the path in the network,
- the nature of the terrain,
- local needs and opportunities, and
- the level and ease of future maintenance.

Our recommendations on widths, for example, are for guidance only, because the provision of a path at our suggested width does not guarantee that the application will be looked on favourably, any more than non-compliance means that application will necessarily be unsuccessful. We are suggesting that new footpaths should be at least 2 metres wide, because this width provides for ease of use and makes the path more accessible for machinery used for cutting. However, if there are good practical, or land management, reasons why the width should be less the diversion may nonetheless be acceptable. We want to encourage easier access to the countryside for all, so we will look more favourably on a new route that has no gates or stiles than on one which affords less accessibility. However, we also recognise that there are reasons why structures may be necessary to manage land properly, so a new path which includes such gates or structures may still be approved. Our guidance should be read in this spirit.

1. Accessibility to users and for maintenance purposes

Structures

- We like routes without gates, stiles, or other structures
- We don't like routes with structures unless these are necessary to prohibit unauthorised use or to control livestock. If a structure is needed to prevent unauthorised use, where possible a gap should be left at the side for pedestrian (and, where necessary, equestrian) access. Structures needed for the control of livestock may be authorised under S.147 Highways Act 1980.
- We don't like stiles.
- We would like you to discuss with us the specification of any structures before submitting your application. Bridleway gates need to have a minimum 1.5metre (5 feet) clear opening, have an easy to use latch and should be double-opening where possible. We would like to see Radar gates and medium mobility gates where improvements to accessibility are needed or desirable.
- We like structures on bridleways at junctions with roads to be sited sufficiently far back from the road junction to provide an area for riders and cyclists to wait safely before crossing.

Width

- We don't like new paths to be narrower than the paths they replace.
- We like paths to be wide enough for people to use easily and for machine access should surface cutting be necessary, ideally a minimum of 2 metres for a footpath and 3 metres for a bridleway but, generally, the wider the path the better.
- We don't like to find that diverted paths are subsequently narrowed by fencing or hedges, so if a path is to be enclosed at least an additional 0.5 metres (18 inches) of width should be offered.

Quality of surface

- We don't like new paths to have a surface which is less durable than the old, or which costs more to maintain. Drainage of the new path is an important matter to consider, as is the ability of the path to dry out after wet weather. The surface of a brand new path across open land may not be as durable as the surface of a path that has been compacted as a result of having been trodden for centuries, so the new path may need to be drained or engineered before it is of a similar standard.
- We like new paths with improved durability, consistent with their character and situation. We will advise on the required standard of construction of a new path. This will vary accordingly to its location and future use. For example, if the diversion means that the path is likely to be used more after the diversion than before, we may require the new path to be constructed to a higher standard than the old.
- We don't like new paths to use private access points where livestock congregate or where surface damage can be caused by farm machinery.
- We don't like new paths to require regular maintenance where this is not necessary on the rest of the path. Consider allowing sheep to continue grazing the area of the new path while excluding cattle and horses from it.

Quality of experience

- We like paths which offer the user a similar, or enhanced, experience to the path diverted, in terms of character, views, gradient and convenience of use.
- We don't like a significant increase in length, unless this is justified where it offers an improved experience or a link to a network not as conveniently accessible on the existing network.
- We don't like paths which take the user away from points of interest, such as views, historic features, or water unless an equivalent feature is available on the new route.

- We like diversions which reduce potential hazards for the user, such as taking users off a busy road, or away from land used by plant and machinery.
- We like paths which are safer for users, such as those with improved sight lines at road crossings and without blind corners or hiding places.
- We like paths which take a route that is easy for the users to follow without excessive signing and way marking.

Strategic value

- We like diversion proposals which provide improvements in connectivity to other parts of the rights of way network or to an area or areas of public access.
- We don't like diversions that do the opposite.
- We like diversions which offer network improvements better than those which do not. All diversion proposals should meet the standards relevant to highways of that type.
- We like diversions which offer additional rights for non-motorised users. If a new footpath is suitable and appropriate for use by horse riders and cyclists, we will welcome the dedication of additional rights for those users.

We reserve the right not to process an application for diversion if rights of way on land owned by the landowner are not fit for use as a result of any default on the part of the owner or occupier of the land.

We will not make or confirm an order if we do not consider it expedient to do so. In deciding whether or not it is expedient, we may take into account the cost of promoting an order once made, and the prospective benefit afforded to the public by the new route.

Appendix 3

Public Footpath Order Costs



Gwynedd Council Public Footpath Order Costs

1.	Fee to be submitted with application	£433.34
2.	Order made	£542.20
3.	Order confirmed without objection	£1,203.73
4.	Order opposed, applicant withdraws application	£962.98
5.	Order Opposed, Authority decides not to proceed	£1,179.64
6.	Opposed Order, Authority proceeds to Public Inquiry and order continued	£4,429.69
7.	Order Opposed, Authority proceeds to Public Inquiry and application is refused	£3,767.12
8.	In addition to the above fees the applicant is also responsible for paying advertising fees which are subject to costs at local papers (see below)	
	2 above: 1 advert	Recover
cost		
	3, 4 and 5 above: 2 adverts	Recover
cost		
	6 and 7 above :3 adverts	Recover
cost		

Appendix 4

GWYNEDD RIGHTS OF WAY DELEGATION SCHEME

All functions relating to rights of way as contained within the following Acts as amended and including all subordinate legislation are delegated to the Head of Regulatory Department (Planning, Transportation and Public Protection):

- National Parks and Access to Countryside Act 1949;
- Countryside Act 1968;
- Highways Act 1980;
- Wildlife and Countryside Act 1981;
- Road Traffic Regulation Act 1984;
- Cycle Tracks Act 1984;
- Countryside and Rights of Way Act 2000;
- Clean Neighbourhoods and Environment Act 2005 (gating Orders)
- Natural Environment and Rural Communities Act 2006 – part 6

NB The above provides that *the determination of all applications with regard to, and decisions to confirm, rights of way Orders are delegated to the Head of Regulatory Department (Planning, Transportation and Public Protection) with the exception of the following:*

- i Applications submitted by serving Members or staff of the Regulatory Department.
- ii Applications involving land owned by the Council.
- iii Decisions to submit Orders made under the Highways Act 1980, where objections are received to the Order and are not withdrawn, to the National Assembly for confirmation
- iv Applications which the Head of the Regulatory Department (Planning, Transportation and Public Protection) considers should be referred to Committee.

- v Applications for Orders made under the Highways Act 1980 where the Councillor in whose ward a proposed Order is located submits a written request to the Head of the Regulatory Department (Planning, Transportation and Public Protection) within the established time scale for consultation that the matter should be decided by the Area Committee. The prescribed period for notification shall be 16 calendar days from the date of the letter of consultation regarding the proposal.