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

Background

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

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

The Definitive Map and Statement shows four categories of path:

- Footpath (FP)
  Use on foot only

- Bridleway (BW)
  Use on foot, on horseback and leading a horse and pedal cycle.

- Byway Open to All Traffic (BOAT)
  Use on foot, on horseback and leading a horse and in or on vehicles, including motor vehicles and pedal cycles. Use must be shown to be mainly on foot and horseback.

- Restricted Byway (RB)
  Use on foot, horseback, pedal cycle, and non-motorised vehicles.

This legal record is a minimum record of rights that are known to exist. There are often cases where paths not recorded on the Definitive Map exist on the ground and have been openly used and enjoyed by the public for a considerable time. In such cases, there may be a basis for that route to be added to the legal record to protect those public rights that have been acquired.
Sometimes the legal record is inaccurate – a way recorded as a public footpath may have been used for 20 years or more as a public bridleway. Alternatively, evidence may exist to show that a path recorded on the Definitive Map is not public or a route is shown on the wrong line or should be more precisely defined.

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

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

Making Your Application

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

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

Schedule 7

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

Schedule 8

You must by law, serve notice on the landowners and occupiers of the land covered by your application. The County Council would recommend that if you are uncertain as to who owns the land then you should complete a Land Registry Search. If having completed the search you are unable to trace the landowner(s)/occupier(s) then you must apply in writing to the Public Rights of Way Team for permission to post notices to the unknown landowner/occupier and this must be posted on site. Permission will be given if the County Council is satisfied that all reasonable attempts have been made to trace the landowner(s)/Occupier(s). Notices must not be posted on site without permission from the County Council.
Schedule 9

This is for you to confirm to the County Council that you have served notice on the landowner(s) and occupier(s) and providing their names and addresses. If you have been unable to trace the landowner and having sought permission from the County Council have posted notices on site. This must be certified to the County Council including a copy of the notice and a map indicating the location of each notice. **N.B. Your application will not be valid and will not be registered until you have submitted this certificate.**

Initial User Evidence Form

If applicable, this form should be copied and filled in by witnesses and signed and dated. A plan or sketch completed by the witness showing the route being claimed should also be submitted with each form.

What happens next?

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

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

The Countryside Access Policy dated 2005 sets out the County Council’s priorities for keeping the Definitive Map and Statement up to date. The main priorities are:

1) Investigation and determination of outstanding applications to modify the Definitive Map.

   Resolution of anomalies and mapping errors where essential for the effective management of the PROW network.

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

   • Where it will satisfy one or more of the relevant key principles set out in paragraph 11.1 of the Countryside Access Policy.
   • Where the physical existence of the claimed route is threatened by development.
   • Where investigation of a case would involve substantially the same evidence as a route currently under investigation or about to be investigated.

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

**Processing the Application**

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

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

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

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

- Schedule 7 – Application Form
- A map to the scale of at least 1:25000 showing the way or ways which are the subject of the application.
- Schedule 9 – Certificate of Service of Notice of Application on landowners.
- If you have been unable to trace landowners:
  - A copy of the Notice and Map showing the location of notices.
  - A copy of the letter from the County Council authorising the notices.
- If applicable, user evidence forms and maps signed and dated by the witness
- If applicable, documentary evidence which is clearly labelled with the name of the document and date (if known).

Please send the application to:

Public Rights of Way
Invicta House
County Hall
Maidstone
Kent, ME14 1XX
To Miss L Mortlock

of Environment & Regeneration Directorate
Kent County Council
Invicta House
County Hall
Maidstone, Kent ME14 1XX

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

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

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

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

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

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

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

DATED this .................... day of ..................................... 200

..................................................
Signed

..................................................
(on behalf of)
NOTICE OF APPLICATION FOR MODIFICATION ORDER
WILDLIFE AND COUNTRYSIDE ACT 1981
THE KENT COUNTY COUNCIL
DEFINITIVE MAP AND STATEMENT

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

I/We [Name of applicant(s)] of [Address of applicant(s)] hereby give notice that on the .................... day of ............................ 200

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

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

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

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

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

DATED this .................... day of ..................................... 200

Signed ....................................................

[on behalf of]

[This notice must be served on every owner and occupier of any land to which the application relates, in accordance with paragraph 2 of schedule 14 to The Wildlife and Countryside Act 1981]
SCHEDULE 9

CERTIFICATE OF SERVICE OF
NOTICE OF APPLICATION FOR MODIFICATION ORDER
WILDLIFE AND COUNTRYSIDE ACT 1981

THE KENT COUNTY COUNCIL
DEFINITIVE MAP AND STATEMENT

To Miss L Mortlock
of Environment & Regeneration Directorate
Kent County Council
Invicta House
County Hall
Maidstone
Kent ME14 1XX

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

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

DATED this .................... day of ..................................... 200

....................................................
Signed

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

Please list names and addresses of all owners and/or occupiers notified.
Wildlife and Countryside Act 1981

PART III

PUBLIC RIGHTS OF WAY

Ascertainment of public rights of way

Duty to keep definitive map and statement under continuous review.

53. – (1) In this Part “definitive map and statement” in relation to any area, means subject to section 57(3), -

(a) the latest revised map and statement prepared in definitive form for that area under section 33 of the 1949 Act; or

(b) where no such map and statement have been so prepared, the original definitive map and statement prepared for that area under section 32 of that Act; or

(c) where no such map and statement have been so prepared, the map and statement prepared for that area under section 55(3).

(2) As regards every definitive map and statement, the surveying authority shall -

(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and

(b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

(3) The events referred to in subsection (2) are as follows –

(a) the coming into operation of any enactment or instrument, or any other event, whereby –

(i) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;

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

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

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

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

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

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

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

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

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

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

(5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one or more events falling with paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and
determination of applications under this subsection.

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

SCHEDULE 14                          Section 53
APPLICATIONS FOR CERTAIN ORDERS UNDER PART III

Form of applications

1. An application shall be made in the prescribed form and shall be accompanied by -

   (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and

   (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application.

2. - (1) Subject to sub-paragraph (2), the applicant shall serve a notice stating that the application has been made on every owner and occupier of any land to which the application relates.

   (2) If, after reasonable inquiry has been made, the authority are satisfied that it is not practicable to ascertain the name or address of an owner or occupier of any land to which the application relates, the authority may direct that the notice required to be serviced on him by sub-paragraph (1) may be served by addressing it to him by the description “owner” or “ occupier” of the land (describing it) and by affixing it to some conspicuous object or objects on the land.

   (3) When the requirements of this paragraph have been complied with, the applicant shall certify that fact to the authority.

   (4) Every notice or certificate under this paragraph shall be in the prescribed form.

Determination by authority

3./(1) As soon as reasonably practicable after receiving a certificate under paragraph 2(3), the authority shall –
(a) investigate the matters stated in the application; and

(b) after consulting with every local authority whose area includes the land to which the application relates, decide whether to make or not to make the order to which the application relates.

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

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

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

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

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

**Interpretation**

5. – (1) In this Schedule –

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

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

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

(2) Regulations under this Schedule shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
THE KENT COUNTY COUNCIL  
WILDLIFE AND COUNTRYSIDE ACT 1981 – SECTION 53  

PRELIMINARY PUBLIC RIGHTS OF WAY EVIDENCE FORM

This form to be completed by the witness and returned to the applicant.

Important Notice  
The object of this questionnaire is to reach the truth of the matter whatever that may be. You are requested to answer the questions as accurately as possible and not to withhold any information, whether for or against the claim. The information given on this form may be presented at a Public Inquiry therefore evidence provided cannot be treated as confidential.

Kent County Council will process the information you provide in connection with Public Rights of Way only. Your information may be passed to the Planning Inspectorate in relation to this claim only. Information provided may pass into the public domain and therefore cannot be treated as confidential.

* Delete as appropriate

WITNESS DETAILS

Name:
Address:
Tel Number (home):    Tel Number (work)
Date of Birth:

DESCRIPTION OF ROUTE

1. From (description and Grid Ref):
   (Grid Ref)
   To (description):
   (Grid Ref)

2. Please mark the route / routes (using a dashed line) used on the attached map and sign it accordingly.

3. Please specify whether you used the way on foot, as a footpath, on horse or bicycle, as a bridleway, in a horse and cart, as a Restricted Byway or in a vehicle, as a byway.
   Please tick as appropriate

<table>
<thead>
<tr>
<th>Footpath</th>
<th>Bridleway</th>
<th>Restricted Byway</th>
<th>Byway</th>
</tr>
</thead>
</table>

Kent County Council - Preliminary User evidence Form  
1 of 4
4. Was this use with the permission of the landowner (private) or as of right (public)? *PUBLIC / PRIVATE

5. When did you first start using the claimed route? ......................Year

6. When did you stop using the claimed route and why? ......................Year

7. Have you ever had any extended breaks from using the claimed route (e.g. military services, family commitments, extended incapacitation) * YES / NO Please indicate dates

8. When using the claimed route what was the purpose of your journey?

9. How frequently have you used the claimed route? (daily, weekly, monthly, occasionally)

10. Have you, or anyone known to you, ever been verbally stopped, prevented from using or turned back when using the claimed route? *YES / NO If yes please provide details (including dates).

11. Have you every been told by the landowner / occupier of the land crossed by the claimed route, or by anyone in their employ, that the route was not public? *YES / NO If yes please provide details and dates

12. During the period of your use of the claimed route have you ever known any gates or stiles? *YES / NO If yes please provide details

<table>
<thead>
<tr>
<th>Dates</th>
<th>Nature of structure</th>
<th>Location (please also indicate on attached map)</th>
</tr>
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<tbody>
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</tbody>
</table>
13. If any of the structures were gates, were there occasions when they were locked?  
*YES / NO  
If yes please provide details including dates

14. Have you ever been prevented, or deterred, from using the claimed route because of the obstructions?  
*YES / NO  
If yes please provide details including dates.

15. Have you ever seen any prohibitive notices on, or associated with the claimed route?  
*YES / NO  
If yes please provide details

<table>
<thead>
<tr>
<th>Dates</th>
<th>Nature and Content of Notices</th>
<th>Location (please also indicate on attached map)</th>
</tr>
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**ADDITIONAL INFORMATION**

If there is any further information that you would like to make please use the space below.
PUBLIC INQUIRY

If necessary, would you be willing to attend a Public Inquiry to give evidence on this matter? *YES / NO

CERTIFICATION

I ..................................................... hereby certify that to the best of my knowledge and belief the facts I have stated are true and this questionnaire contains an accurate record of those facts.

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

Name (print):.....................................................

If this form was completed in the presence of the applicant, or the applicant’s representative, that person must also sign here.

Signature:.....................................................  Date:.....................................................

Name (print):.....................................................

If someone other than the witness is completing this questionnaire or sections of this questionnaire please indicate reasons below.

Name of person completing the questionnaire (print):.....................................................

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