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Applications to record public paths after twenty years' use

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Introduction

1. The definitive map and statement is a record of public rights of way held by every surveying authority in England and Wales. By 'surveying authority', we mean county councils, unitary authorities and London borough councils.
2. It is possible to apply to include on the definitive map routes which have been used by the public, 'as of right' (we explain what this means below), for 20 years.
3. A route which is recorded on the definitive map is thus offered considerable protection — from being built on, or arbitrarily closed, for instance. It is therefore well worthwhile to be identifying now any routes which the public has used for 20 years and which are not on the definitive map.
4. In addition, under Part II of the Countryside and Rights of Way Act 2000, historical footpaths and bridleways, which came into existence before 1949 but which have not been recorded on the definitive map and statement by 1 January 2026, may be extinguished (the precise criteria for extinguishment have not yet been set out in regulations). Many of these unrecorded historical paths are still in use, and can be recorded now on the basis of 20 years' use before it is too late.
5. You may be considering getting a path recorded because of some questioning of its public use; perhaps there is a new landowner. Or you may wish to preserve and enhance the path network. In either case, looking at the current definitive map with its accompanying statement (available at some libraries and most council offices) is a first step.
6. As well as self-contained routes between other paths or roads, look out for short lengths of path which stop at parish or community boundaries or where the paths appear to join roads. In 2026 even an unrecorded length of path just a few feet long could allow the landholder to stop up access to that part of the path for ever. Also, do not assume that a green lane, even a tarmacked one, is safe from the 2026 cut-off. And it is not just country paths and green lanes; another poorly-recorded category of public path is the village or urban alleyway. These may need to be on the definitive map by 2026 too.

How to apply for a path

7. Check with the surveying authority that the path is not already accepted by it as a public highway. (Note that inner London boroughs are not required to have a definitive map of rights of way.) If it is, the authority may be able to assist in asserting your rights, possibly without you needing to apply to include the path on the definitive map. For example, it may have proof of some event such as a legal diversion onto the route, or if it does not have conclusive evidence, it may nevertheless have enough to persuade the landowner to enter into a creation agreement so as to avoid years of uncertainty.
8. If the authority cannot assist, or process it itself, you need to gather evidence of use over 20 years or more. There is an alternative, or complementary, way of getting paths recorded and that is by researching historical evidence, but this information sheet does not cover that.

Gathering evidence

9. We suggest you obtain at least half a dozen witnesses who have used the path during the 20-year period. A greater number will strengthen your case—convincing evidence from 20 or 30 witnesses is a good target.
10. The 20-year period must run back from the date when the public right to use the path is brought into question. This usually means when someone made it clear that the path was not available for general public use, for example by erecting a 'private' notice or locking a gate across the path. If there has been no attempt to deter use, the date when you apply for the path to be added to the map can be treated as the date when the way was brought into question.
11. You should then collect evidence for at least the 20-year period you have identified. Not every witness needs to have used the way for the whole period, but between them the whole period must be covered. If your witnesses are elderly, or are unlikely or unwilling to attend a public inquiry, it is advisable for them to make a statutory declaration so that their evidence will carry more weight at the inquiry even if they are unable to attend. Applications should not be made for ways where access is already prohibited (eg military sites, railway lines). However, a potential breach of byelaws (for example, riding on land contrary to byelaws) may not be fatal to your case if the byelaws could be waived (it doesn't matter that they were not waived)—please seek advice if this applies.
12. The use must be without interruption and without permission. Very often,

use tailed off or ceased for several months in 2001 during the outbreak of foot-and-mouth disease: your witnesses should record any cessation of use at this time, and the circumstances (for example, did people stop using the route voluntarily, or did the landowner close the route?). A temporary cessation of use is not necessarily fatal to the application.

13. Most surveying authorities produce a user-evidence form on which to gather the evidence.
14. It is important to be clear and reasonably consistent as to the application route. Some application forms ask for a sketch map, but many people fill these in inadvertently on routes that differ from what they use. It is recommended that a little research is done in places where the path, perhaps a cross-field path, doesn't follow a well-defined way. Many counties have air photographs that can indicate old crossing-points of long-gone hedges. Then if the route ties in with the modern route it can be shown on the map, but make it clear that people should verify it or modify it to show where they walk or ride. It may be helpful to have photographs of the route available to inform the completion of the form, so that the witness can draw the route on the map in relation to visual prompts.

Applying for the path to be added to the definitive map

15. In applying for the path to be added to the map, you are asking the surveying authority to make a definitive map modification order under section 53 of the Wildlife and Countryside Act 1981.
16. The surveying authority is under a duty to keep the definitive map and statement under continuous review. It must amend the map and statement if evidence comes to light that a path should be recorded as a public right of way.
17. You should ask your surveying authority to send you the information for claiming a path. It will send you the forms to complete. There is no charge for applying for a modification order.
18. If you expect your 20-year period to run back from the date of your application (because use of the route was not brought into question on any earlier date), try to apply as soon as possible after you have gathered your witness evidence. Your evidence must cover the period right up to the date of the application, so if your witnesses completed their evidence forms six months earlier, there will be a gap of six months in the evidence.

If necessary, ask for supplementary evidence from a few key witnesses to cover any significant gap of more than a few weeks.

19. You will have to complete the following:

a. An application form and map drawn to a scale of at least 1:25,000 which you send to the surveying authority together with the witness forms and any other evidence.⁽¹⁾

b.

Send these to the surveying authority and ask for the authority to confirm that, in its opinion, the application is duly made. If the authority is satisfied the application is duly made, it should register it. The register (known as the 'section 53B register'⁽³⁾) should be published on the authority's website. When you have received confirmation, you will need:

A notice which must be sent to every landowner or occupier affected by the application.⁽²⁾ You may not know who they are, but you can undertake a search with the Land Registry, see www.landreg.gov.uk, and make local enquiries. If you cannot obtain the information, the authority has the power to say that the notice can be placed on the land instead. Send the notices, or post the notices on the land with the agreement of the authority, or both. It is best if you can prove that the notices were received (for example, if you deliver them by hand and keep a record, or use a signed-for service). When you are satisfied that the notices have been sent, or posted on the land, you will need:

c. A certificate of service of notice which has to be sent to the surveying authority, to say that the notice of application has been sent to all who own or occupy the land affected⁽⁴⁾ or that you have placed the notice on the land as above.

20. It is essential to submit the forms listed above, in the order in which they are given (do not send them all at the same time). Sending the witness forms alone does not constitute a properly completed application.

What happens next?

21. The authority will analyse your application and in due course should decide whether to proceed with it. It must make an order if it is satisfied that the way is 'reasonably alleged to subsist'. At this stage, it does not need to be satisfied that it is definitely, or even probably, a public highway.
22. If it decides to proceed, it will make a definitive map modification order, which will be advertised in the press and sent to prescribed organisations which include us. If there are no objections within the stated period the authority normally confirms the order itself and the path is added to the definitive map. If there are objectors, the order is submitted to the Planning Inspectorate for determination, usually by a public inquiry. If an inquiry is held, you will need to call some or all of your witnesses to give evidence. The witnesses will probably be cross-examined on the evidence they give—that means that someone will question them, after they have given their evidence, to see whether their evidence is consistent and truthful.
23. Many authorities have a large backlog of applications so this could take some time. If the authority has not made a decision on your application within 12 months of its receiving the certificate referred to above, you can apply to the Secretary of State for Environment, to direct the authority to make the order.

Further information about how to apply can be found at: www.gov.uk/government/publications/schedule-14-direction-apply-to-the-secretary-of-state-for-a-direction.

Also, if your application is rejected, you can appeal to the Secretary of State within 28 days of receiving the notice of decision.⁽⁴⁾ If the Secretary of State allows your appeal she will direct the authority to make the order. Further information about how to appeal can be found at: www.gov.uk/government/publications/schedule-14-appeal-form.

Notes

1. *Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993*
SI 1993 no 12, schedule 7
2. *ditto, schedule 8*
3. *Section 53B of the Wildlife and Countryside Act 1981*
4. *Schedule 9 to the 1993 Regulations*
5. *Wildlife and Countryside Act 1981, Schedule 14, paragraph 4.*

Further reading

Rights of Way, A guide to law and practice, 4th edition, (2007) by John Riddall and John Trevelyan, a joint publication of the Open Spaces Society and the Ramblers' Association.

Order online at www.ramblers.co.uk/rightsofwaybook
or by post from Cordee Ltd, 3a De Montfort Street, Leicester, LE1 7HD or phone 0116-2543579 email sales@cordee.co.uk

£29.95 + £5.50 post and packing

(Please do not send cheques to the Open Spaces Society)

Restoring the Record by Phil Wadey (a trustee of the Society) and Sarah Bucks, price £30, ISBN number: 978 0957403604

Stepping Forward, the Stakeholder Working Group on Unrecorded Public Rights of Way report to Natural England, published 2010 can be obtained from <http://naturalengland.etraderstores.com/NaturalEnglandShop/NECR035>

While the Open Spaces Society has made every effort to ensure the information obtained in this factsheet is an accurate summary of the subject as at the date of publication, it is unable to accept liability for any misinterpretation of the law or any other error or omission in the advice in this paper.

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