
**Bath & North East
Somerset Council**

**MODIFICATION ORDER
APPLICATION PACK**

**for modifications to the
Definitive Map and Statement
for Bath and North East Somerset**

**Public Rights of Way Team
November 2014**

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1. ADVICE TO APPLICANTS

This application pack gives details about how you can make a Modification Order application. The process is about correctly recording the rights which already exist.

The Definitive Map and Statement

The Definitive Map and Statement is a legal document which records Public Rights of Way in Bath and North East Somerset. It is conclusive evidence of the existence of a right of way which is shown (although other rights of way may exist which are not shown). It is therefore important that it correctly records the rights that exist. It comprises:

- The Definitive Map – a map showing the position of each path
- The Definitive Statement – a written description of the route of each path

The Definitive Map and Statement show four categories of right of way, which are all public highways:

- Footpath (FP) for people on foot only
- Bridleway (BR) for people on foot, riding or leading a horse or riding a bicycle
- Restricted Byways (RB) for all of the above, plus non-motorised vehicles
- Byway Open to All Traffic (BOAT) open to all the above plus motor vehicles.

You can see the Definitive Map and Statement for Bath and North East Somerset at the Authority's Civic Centre Offices in Keynsham.

Modification Order Applications

The Modification Order procedure exists to ensure that the Definitive Map and Statement can be corrected to record Public Rights of Way which already exist. If you believe the Definitive Map and Statement to be incorrect you may apply for a Modification Order, submitting evidence with your application. The reason you need to apply for an Order is because the Definitive Map and Statement is a legal document and can therefore only be changed by a legal order. Bath and North East Somerset Council ("the Authority") has a statutory duty to process these applications. The procedure to make orders is defined by legislation and is lengthy (i.e. may take several years) because it is a public process. If an order is made and confirmed, this will change the Definitive Map and Statement. Once an application has been made, please note that it cannot be withdrawn.

This process cannot be used to alter a right of way just because you would like it altered or think a different route would be better. You will need to submit evidence in support of your application and be prepared to support your case if it goes to public inquiry.

Reasons for Making an Application

There are several reasons why you might think that the Definitive Map and Statement is wrong:

- a route should be shown and isn't – i.e. it should be added
- a route is shown as having the wrong status – i.e. it should be upgraded or downgraded to its true status
- a route is shown on the wrong line – i.e. it should be amended
- a route should not be shown at all – i.e. it should be deleted
- a route ought to be more precisely defined - i.e. it should be varied

Types of Evidence

The Modification Order procedure is governed by the Wildlife and Countryside Act 1981, and guidance given in Circular 1/09 states that the application must be accompanied by copies of any supporting evidence. The Authority is required to weigh each piece of evidence which is submitted to it, or is discovered during its investigation, and **your application will therefore need to be supported by evidence**. Evidence falls into two main categories, either:

- use of the right of way by the public
- historical documents including old maps.

Use by the Public

A public right of way can come into existence through usage by the public over a sufficient period of time.

If you are making an application based on user evidence, you will need to submit user evidence from other people who have used the route. It is not sufficient to say that you have seen others using the route. To assist you in collecting evidence from the public, we have compiled a User Evidence Form which collects the basic information we need when deciding on an application. For example, you will need to provide evidence to show:

- that the route has been used openly (that is without force secrecy or permission) for at least 20 years by the public
- that more than a few people used the route i.e. the public in general
- that the landowner never tried to prevent people using the route during the 20 year period
- that a specific route from A to B is used, rather than people wandering freely over open land

A copy of the User Evidence Form is included at the end of this pack. You can copy it as many times as you like: the more evidence you can collect, the stronger your case will be. Please note that the form has been designed to allow removal of personal data until such time as it becomes public, such as at a public inquiry. Applicants must **not** complete any section of other people's forms themselves or mark the route on the map; this must be done by the individual users.

Documents and Old Maps

A public right of way may have existed for over a hundred years but is not recorded on the Definitive Map and Statement. Old maps and documents can provide evidence for this. If the route is shown on sufficient documents this is strong evidence for its existence. Such documents can also provide evidence of the route's status.

The Somerset Heritage Centre (SHC) in Taunton, the Bath Records Office (BRO) in Bath and The National Archives (TNA) in Kew hold many historical maps and documents which may help you to provide evidence of the existence of an old public right of way. You can find evidence for the existence and status of a route by looking at various old maps and documents such as:

- tithe maps – 19th century
- inclosure maps – 18th and 19th century
- maps for the construction of canals and railways – 18th and 19th century
- Inland Revenue plans from 1910-14
- title deeds or estate maps – any period
- Ordnance Survey maps – from 19th to 20th century. Please note that depiction of a route on most Ordnance Survey maps can only be taken as evidence of existence, and is not evidence of a right of way due to the disclaimer which you will find printed on their maps.

You will need to include copies or photographs of any documents which you intend to rely upon.

If you are making an application that a right of way does not exist and needs to be deleted, it is recommended that the above documents are looked at in the SHC, BRO and TNA as these documents may provide evidence about whether a route is shown (and perhaps subsequently extinguished) or not shown at all. In addition you will need to provide cogent evidence of the mistake that was made at the time the route was recorded on the Definitive Map and Statement. Please note that the onus is on the applicant to prove that a right of way does not exist.

2. HOW TO MAKE THE APPLICATION

In order to make an application in “the prescribed form” you will need to:

- complete Forms A-D
- enclose a map (at 1:25,000 scale or larger) showing the route
- enclose copies of your evidence

Form A – Application for a Modification Order

- You need to fill in your name and address at the top of the form.
- You need to tell us what you are applying for by selecting one of the four options of delete, add, upgrade/downgrade or varying the particulars*.
 - **Delete** - remove a right of way from the Definitive Map and Statement that is currently shown
 - **Add** - there is currently no right of way shown and you think the map needs to be amended to show one that is not recorded
 - **Upgrade/Downgrade** - there is already a route shown on the Definitive Map and Statement but you have evidence that the status recorded is incorrect (e.g. a route recorded as a FP has RB rights = “Upgrade”; a route recorded as a BR only has FP rights = “Downgrade”)
 - **Varying the Particulars** of a right of way i.e. new description or add more detail to the statement about the position, widths limitations etc.

**N.B. sometimes more than one option will be required.*

- You need to attach a map at 1:25,000 (or larger e.g. 1:10,000) on which you have marked the application route.
- You need to list the evidence that you are relying on to support your application. If you need more room, please continue on the reverse.
 - Documentary evidence - see ‘Types of Evidence’ for examples of the documentary evidence that may accompany your application; please attach copies of the documentary evidence.
 - User Evidence - please use the sample User Evidence Form which is included at the end of this pack (it can be copied as many times as you like). Each User Evidence Form must be accompanied by a map. Do not mark the map yourself with the application route. Each individual giving evidence must fully complete their own form and mark the map with the route they have used. If the form/map is partially completed by the applicant, this reduces the value of the evidence given and could result in the route not being added to the Definitive Map and Statement.
 - Please collate the User Evidence and check that they are all signed and dated. It helps us if you can send them all with the application so that they do not get mislaid. If you do send additional forms in later please make sure they are marked to clearly identify which application they relate to.
- You need to sign and date the application.

If you need help with the grid references, or would like us to provide a map on which you can mark the application route, please contact us.

Form B – Notice of Application for a Modification Order

- You need to inform any landowner affected by the application
 - If you do not know the landowner, you can contact the Land Registry office in Plymouth on 01752 636000. Alternatively the Parish Council or the Public Rights of Way Team may be able to assist you.
- You need to send one copy of this form to each landowner, together with a copy of the map showing the application route
- You need to send us a copy of each landowner notice.
 - It is helpful if you provide us with a copy of the covering letter that you write to each landowner to accompany the Notice.
- If you are not able to identify the landowner you must seek permission from the Authority to post notices on site.

Form C – Certificate of Service of Notice of an Application for a Modification Order

- You need to fill in your name and address, sign and date this (to confirm that you have served the Notices on all the landowners)

Form D – Summary of Modification Order Application

- You need to fill in your name and address and date of application
- You need to describe the route of your application from public highway to highway. You will need to include details about its length, width etc.

Once all four Forms are completed, signed and dated, you will need to send them together with the documentary and/or user evidence in support of your application to:

Public Rights of Way Team
Lewis House
Manvers Street
Bath
BA1 1JG

Telephone: 01225 477650

www.bathnes.gov.uk

- Remember to include:
- Form A with map marked to show route
 - Form B
 - Form C
 - Form D
 - Your evidence - documentary and/or user

(Don't forget to take copies for your own records)

What happens next?

Each application received is checked to ensure that all the details required have been enclosed. Incomplete applications will be returned to you, requesting the missing information. Complete applications will be acknowledged and dealt with in chronological order. When your application reaches the top of the list, you will be informed and we will start the investigation. Please see the Flowchart included in this pack for details of the rest of the process.

APPLICATION FOR A MODIFICATION ORDER

Wildlife and Countryside Act 1981
**The Definitive Map and Statement of Public Rights of Way
in Bath and North East Somerset**

To : *Public Rights of Way, Bath and North East Somerset Council*
of : *Lewis House, Manvers Street, Bath, BA1 1JG*

I/we : *name and address of applicant(s)*
of :

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;

N.B. CHOOSE ONE OR MORE OF THE FOUR OPTIONS GIVEN BELOW

* adding the from # to # ** delete as appropriate*
*footpath
*bridleway
*restricted byway
*byway open to all traffic
fill in grid references for start and end of routes

* upgrading/downgrading the route currently shown as a from # to # *# fill in grid references for start and end of routes*
*footpath
*bridleway
*restricted byway
*byway open to all traffic
so that it is shown as a
*footpath
*bridleway
*restricted byway
*byway open to all traffic

* deleting the from # to #
*restricted byway
*byway open to all traffic
*bridleway
*restricted byway
*byway open to all traffic

* varying /adding to the particulars relating to the from # to #
*footpath
*bridleway
*restricted byway
*byway open to all traffic
by providing that
.....
explain how you want the particulars altered

and shown on the map accompanying this application.

I/we attach copies of the following evidence in support of this application;
.....
.....
.....
list the evidence which supports your application

Dated Signed

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NOTICE OF APPLICATION FOR A MODIFICATION ORDER

Section 53(5) and Schedule 14 to the Wildlife and Countryside Act 1981
**The Definitive Map and Statement of Public Rights of Way
 in Bath and North East Somerset**

To : *name and address of owner or occupier*
 of :

Notice is hereby given that on day of 20 *give the date of your application*

I/we : *name and address of applicant(s)*
 of :

made application to the Public Rights of Way Team, Bath and North East Somerset Council, Lewis House, Manvers Street, Bath, BA1 1JG that the Definitive Map and Statement for the area be modified by;

N.B. CHOOSE ONE OR MORE OF THE FOUR OPTIONS GIVEN BELOW

*adding the	*footpath *bridleway *restricted byway *byway open to all traffic	from#	to #	<i>* delete as appropriate - take detail from application</i>
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*upgrading/downgrading the route currently shown as a	*footpath *bridleway *restricted byway *byway open to all traffic	from#	to #	<i># fill in grid references for start and end of routes</i>
to be shown as a	*footpath *bridleway *restricted byway *byway open to all traffic			

*deleting 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 *explain how you want the particulars altered*

and shown on the map accompanying this notice.

Dated Signed

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CERTIFICATE OF SERVICE OF NOTICE
OF
APPLICATION FOR A MODIFICATION ORDER

Wildlife and Countryside Act 1981
**The Definitive Map and Statement of Public Rights of Way
in Bath and North East Somerset**

To : *Public Rights of Way, Bath and North East Somerset Council*
of : *Lewis House, Manvers Street, Bath, BA1 1JG*

I/we :
of :

*name and
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 and attach a copy of each notice served pursuant to that Paragraph.

Dated Signed

Paragraph 2 of Schedule 14 to the Wildlife and Countryside Act states that ;

“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”

“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 ... 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”

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SUMMARY OF MODIFICATION ORDER APPLICATION

Wildlife and Countryside Act 1981
**The Definitive Map and Statement of Public Rights of Way
in Bath and North East Somerset**

Name and address
of Applicant

Date of Application

Description

*Please describe the route starting at one end and working through to the other end.
Describe any feature of note, roads, landmarks, buildings, hedges etc.
If the route has a name or nickname please give it here.*

.....
.....
.....
.....
.....
.....
.....

Length

*Please give the approximate length of the entire path in metres.
If you are claiming more than one path in the same application please give the length of each path separately.*

.....

Width

*Please give the full width of the path you are claiming.
Please also give the width of the claimed path as it is now*

Width :
claimed

Width now :

Nature of surface

Please describe the surface of the path e.g. grass, made up track, ploughed, mud.

.....
.....

Location of structures

Please give details and grid references for any gates, stiles, fences, bollards, barriers etc which are on the route now. Do not give details of fences if they run beside the route unless they are encroaching.

Structure	Grid Ref	Structure	Grid Ref	Structure	Grid Ref
.....
.....
.....

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Parish &/or Name of Route (if known) _____

PLEASE NOTE:

- This form is designed to help establish whether or not the claimed route is a public right of way. It also provides evidence of how it is used e.g. on foot, on horseback, by vehicles etc.
- If the Authority proceeds with the claim, but it is contested (e.g. by a landowner), there may be a Public Inquiry. Public Inquiries are usually held locally (i.e. in the village hall). If you are unable to attend a Public Inquiry your evidence may be given in writing, but user evidence is of much greater value if you attend in person and are prepared to answer questions on your evidence (see Question 21). Inquiries are kept as informal as possible, and the Authority will help you give your evidence.
- The information you give in this form will be processed in accordance with the Data Protection Act 1998. It is held by the Public Rights of Way Team of Bath and North East Somerset Council for the purpose of processing your user evidence.
- If a Public Inquiry takes place your evidence, including your personal information and comments, will be made available to the Inquiry in order to be used as part of the case. If you consent to Bath and North East Somerset Council disclosing the personal information contained within this User Evidence Form to anyone reasonably requiring access to this evidence, please tick the box at the end of this form.
- This form should be completed by one person only and should relate to only one route. If you need more space please continue on a separate sheet. Please use black ink.
- Forms should be accompanied by a map and the person completing the form should draw the route they have used on the map themselves.

Please return this form to the person who asked you to complete it, or send it to:

The Public Rights of Way Team, Bath and North East Somerset Council,
Lewis House, Manvers Street, Bath, BA1 1JG.

If you need any help to complete this form please contact us on 01225 477650.

1. **Name (Mr/Mrs/Miss)**

2. **Address:**

.....**Postcode:**

Telephone: (work) (home)

Email:

3. **Date of Birth:** **NB:** You do not have to give your date of birth, but it helps the Authority assess your evidence.

4. Please give a full description of the route you use (e.g. where you start from, where you go and where you finish), **mark it on a map and attach the map to this form**

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

5. How have you used the route, and during which years?

(a) on foot	<input type="checkbox"/>	between	_____	and	_____
(b) on horseback	<input type="checkbox"/>	between	_____	and	_____
(c) on bicycle/horse-drawn vehicle	<input type="checkbox"/>	between	_____	and	_____
(d) with motorised vehicle	<input type="checkbox"/>	between	_____	and	_____

6. Were there any years during which you did not use the route at all? YES NO

If YES, which years and why? between _____ and _____

.....

.....

7. How frequently do/did you use the route?

	daily	once a week	once a month
(a) on foot	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) on horseback	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) on bicycle/horse-drawn vehicle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) with motorised vehicle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If less than once a month, please specify how many times a year you use the route.

.....

8. For what purpose do/did you use the route? e.g. for pleasure, going to work etc.

.....

9. Has the route always followed the line described above? YES NO

If NO, please describe how, when and why it changed.

.....

.....

10. How wide is the route? [feet][metres]

11. Has the route always been the same width? YES NO

If not, how wide did it used to be? [feet][metres]

12. When you have used the route were you:-
- | | | | | |
|---|-----|--------------------------|----|--------------------------|
| (a) the owner | YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
| (b) the tenant | YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
| (c) an employee of the owner/tenant | YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
| (d) a family member of any of the above | YES | <input type="checkbox"/> | NO | <input type="checkbox"/> |
- of the land over which the route runs?

13. Did you ever meet the landowner, their employees or family while you were using the route? YES NO
- If YES, what did they say?
-

14. Have you ever been given permission to use the route? YES NO
- If YES, who gave you permission and when?
-

15. Has anyone ever attempted to turn you back or said that you had no right to be on the route? YES NO
- If YES, please give details including when this happened.
-

16. Have you ever seen any notices on or near the route either encouraging or discouraging your use of it? YES NO
- If YES (a) where were they?
- (b) what did they say?
- (c) when were they present? between _____ and _____

17. Have there ever been stiles, gates or bridges on the route? YES NO
- If YES (a) what were they?
- (b) when were they erected?
- (c) how long were they in place?
- (d) did they prevent or deter you from using the route? YES NO
- (e) if gates were present, were they ever locked? YES NO
- If YES, when and for how long?

Please mark the location of any notices, stiles, gates or bridges etc. on the attached map.

18. Has there ever been an obstruction to your use of the route? YES NO
- If YES (a) what was the obstruction?
- (b) when was it put there?
- (c) how long was it in place?
- (d) did it prevent or deter you from using the route? YES NO

Please mark the location of any obstructions on the attached map.

19. Do you have any other information about the route which might be useful?

20. If you wish to add any further details about the route which you cannot show on the attached map, please sketch them here.
-

21. If necessary, would you be prepared to give evidence at a Public Inquiry in respect of the evidence you have given? YES NO
- If not, please briefly explain your reasons.

I confirm that to the best of my knowledge and belief the information I have given is true.

I also understand that this evidence may be presented at Public Inquiry and I authorise Bath and North East Somerset Council to use this form for that purpose.

Signature: Date:

Please note that the contents of this evidence form may become public knowledge.

I consent to Bath and North East Somerset Council disclosing the personal information contained within this User Evidence Form to anyone reasonably requiring access to this evidence prior to a public inquiry, please tick this box if applicable

FLOWCHART SHOWING THE PROCESS FOLLOWED BY BATH AND NORTH EAST SOMERSET COUNCIL WHEN INVESTIGATING AN APPLICATION FOR A RIGHT OF WAY



