



# **MODIFICATION ORDER PACK**

**for applying for modifications to the  
Definitive Map and Statement  
of Public rights of Way  
for Hertfordshire**

**Countryside and Rights of Way Service  
July 2020**

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## **1. ADVICE TO APPLICANTS**

This pack gives details about how you can make a modification order application. The process is about correctly recording the rights which already exist. If you wish to find out more information about how Hertfordshire County Council (HCC) will process the application and make a decision based on the evidence available, please visit our Rights of Way pages at [www.hertfordshire.gov.uk/row](http://www.hertfordshire.gov.uk/row) or contact the Countryside and Rights of Way Service on 01992 555279 or [row@hertfordshire.gov.uk](mailto:row@hertfordshire.gov.uk). Further guidance can also be found at:

- The Government's information website at <https://www.gov.uk/topic/outdoor-access-recreation/rights-of-way-open-access>
- Department of Environment, Food and Rural Affairs (Defra) in [Circular 1/09](#)

### **Modification Order Applications**

You will need to complete the attached application forms and send them, together with a map showing the route and evidence to support your application, to the address given. You are also requested to provide photographs of the route as part of the application.

Once your application has been accepted it cannot be withdrawn, and it will be publicly available at County Hall and on our website. Details of applications that have already been made are held at <http://www.hertfordshire.gov.uk/rowapps>. You can therefore check whether an application has already been made, in which case your evidence will be added to it. However, it is recommended that you contact HCC to discuss whether anyone else is also proposing to make an application for the same route.

Please take copies of the evidence you submit to HCC. As the applicant, you will be expected to support your application by responding to any queries from HCC; and if a public inquiry is necessary to contact your witnesses and be prepared to give an oral statement at the inquiry.

Please note that this process is about correctly recording existing rights. If you wish to alter a right of way or think a different route would be better, you need to apply for a Public Path Order.

Making any application is a formal process because the Definitive Map and Statement is a legal document and can therefore only be changed by a 'confirmed' legal order. Investigation of applications is a public process requiring consultation and as any application affects land, objections are often received. Resolving such disputes is not a quick process. All applications are prioritised; yours may not be started immediately, and once the investigation has started may take several years to process.

### **How are Rights of Way recorded?**

The Definitive Map and Statement of Public Rights of Way for Hertfordshire is conclusive evidence of the existence of the rights of way which are 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 is comprised of:

- the Definitive Map – a 1:10,000 scale map showing each path or way, and
- the Definitive Statement – a written description of each path or way.

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 Byway (RB) for all 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 Hertfordshire at County Hall. The district council offices, parish councils and libraries have copies for their local area. The information is also held on HCC's website at [www.hertfordshire.gov.uk/rowmap](http://www.hertfordshire.gov.uk/rowmap).

### Reasons for Making an Application

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.

There are several reasons why you might think that the Definitive Map and Statement needs to be amended. You can apply to have:

- a route added
- a route removed (this needs to be based on evidence that a route is incorrectly recorded and is not to be confused with the extinguishment of a route that is no longer needed, which is an 'extinguishment order application')
- the status of a route changed (e.g. change the status from a footpath to a bridleway)
- the alignment of a route changed where this is wrong (please note this cannot be used to divert a path if you want it moved – that is a 'diversion order application')
- the details of a route more precisely defined (e.g. have its width recorded)

If you wish to apply to downgrade or delete an existing right of way, please note that the onus is on you as the applicant to prove that a right of way does not exist. There has been case law on this point, and guidance is given in Defra's [Circular 1/09](#).

### Types of Evidence

The modification order procedure is governed by the Wildlife and Countryside Act 1981. The legislation states that the application must be accompanied by copies of any supporting evidence. When making its decision, the HCC is required to weigh each piece of evidence which is submitted, or is discovered during its investigation, 'on the balance of probability'.

**Therefore, your application will need to be supported by evidence**, which can include:

- use of the right of way by the public, and/or
- historical documents including old maps.

The evidence you provide may relate to either or a combination of both.

#### Use by the public

A public right of way can come into existence through use by the public over a sufficient period of time. However please note that if a route gets recorded, this does not automatically mean it will be maintainable at public expense.

If you are making an application based solely on user evidence, you will need to submit evidence from people who have used the route. It is not enough to say that you have seen others using the route. Before making an application based solely on use, you will need to be able to provide evidence to show:

- that the route has been used for the last 20 years by the public (or for the 20 years prior to the date use was challenged)
- that the route has been used openly (that is without force, secrecy or permission)
- that the public in general use the route
- whether or not the landowner has ever tried to prevent people using the route
- which specific route has been used, rather than people wandering freely over open land
- that the route joins a public highway or runs to a place of public interest such as a viewpoint or common land

If any user evidence is provided in support of historic evidence, then it may not be necessary to show “20 years use prior to the date of challenge”.

It is important that users supply as much information as possible, including details of the years they used the route, the frequency and type of use (walking, horse riding etc) and diagrams where necessary. A plan clearly showing the exact route used should always be included by each person and they could also include a sketch map. Users must complete their own evidence, providing as much of the information requested as they can. This will make sure a full picture of the use of the route is presented with the application.

To assist you in collecting evidence from the public, we have compiled a User Evidence Form to ensure users provide us with the basic information we need to decide the application. The form is on the [Hertfordshire.gov.uk](http://Hertfordshire.gov.uk) website, or it can be sent to you on request. Blank forms can be copied as many times as you like. HCC may contact witnesses if we need to clarify details of their evidence. Whilst there is no legal minimum for the number of witness forms that should be supplied with an application, the more evidence that is presented the clearer the case will be.

Please note that demonstration of use for the 20-year period can be from individuals who have used the route for 20+ years, or through witnesses whose use of the route overlaps and can be put together to make a 20-year period. Therefore, if Witness A used the route between 1990 and 2001 and Witness B used the route between 2000 and 2010, the use of the route can be ‘joined’ to show ‘one’ 20-year period of use by the public.

If your application relates to more than one route, i.e. there is a junction in the route and people use routes running in different directions, please contact us before you start collecting evidence. This is because we will need separate evidence forms to be filled in for each route used. This is to enable the evidence to be assessed by us, and possibly an inspector at a public inquiry. To prevent the need to provide further evidence at a later stage, it is important your application is properly supported by as much evidence as possible when it is submitted.

You may wish to consider taking more in-depth statements from key witnesses in case they cannot be contacted later (e.g. through a change of address) when the case is investigated. Please contact us for the best way to do this.

### Old Maps and Documents

A public right of way may have existed for over a hundred years but is not recorded on the Definitive Map. Information given in old maps and documents can provide evidence that the route exists and whether or not it is a public highway. Some documents may provide conclusive evidence; others may provide supporting evidence which can be considered together with other documents.

The Hertfordshire Archives and Local Studies (HALS) located in the Registry block at County Hall holds many historical maps and documents which may help you to provide evidence of the existence of a public right of way. The staff in HALS are very helpful and will be able to assist you with your search. You can find evidence for the existence and status of a route by looking at various old maps and documents such as:

- tithe maps – 19<sup>th</sup> century
- inclosure maps – 18<sup>th</sup> and 19<sup>th</sup> century
- maps for the construction of canals and railways – 18<sup>th</sup> and 19<sup>th</sup> century
- Inland Revenue plans from 1910-11
- title deeds or estate maps – any period

- Ordnance Survey maps – from 19<sup>th</sup> to 20<sup>th</sup> century. Please note that depiction of a route on most OS maps can only be taken as evidence of existence and is not evidence of a right of way due to the disclaimer found on the maps.

More information about documents relevant to rights of way is available in “Restoring the Record” by Phil Wadey and Sarah Bucks, or “Rights of Way, A Guide to Law and Practice” by John Riddall and John Trevelyan.

The law currently says that your application must include copies of every piece of evidence that you rely upon. It is possible to use non-flash photography in HALS to photograph the documents, which you can then send to us on paper, disk or by email.

### **What happens next?**

Each application received by HCC is checked to ensure that all the details required have been enclosed<sup>1</sup>. Incomplete applications will be returned to you, requesting the missing information. It is essential you supply additional information promptly<sup>2</sup>. Applications for routes that do not connect to a public highway or place of public interest will also be returned. Your application must include a map to the right scale<sup>3</sup> showing the application route. Complete applications will be acknowledged, given a file reference, and [prioritised](#) according to HCC policy as explained on our website.

Evidence which you can provide to help us correctly prioritise the application includes:

- whether the route is useable or whether it has been blocked off
- how frequently the route is used and
- whether the land over which the route runs is threatened by development, or the subject of a planning application, or has been granted planning permission.

Please keep us informed of any change in circumstances; such as an application for development (as the case may need to be re-prioritised) or if your address changes.

Due to the number of applications awaiting investigation, it is unlikely that investigation will start immediately. We will acknowledge receipt of your application and if necessary, contact you for more information. You may send further information to be added to your file at any time and this will be acknowledged. You will then be contacted when we start the investigation. Please see the [flowchart](#) for details of the rest of the process.

### **The Register of Applications:**

The County Council is required by the legislation<sup>4</sup> to keep a register of all applications made to modify the Definitive Map & Statement. The associated regulations<sup>5</sup> state that applications must be added within 28 days of receipt and the Register must be publicly available at the County Council’s office and on its website. The information that must be contained includes; a copy of the application and associated map, a description of the route, the applicants name and address (subject to the information in the next paragraph), the effect of the application, the date

<sup>1</sup> [R \(on the application of \(1\) Winchester College \(2\) Humphrey Feeds Ltd\) v \(1\) Hampshire County Council \(2\) Secretary of State for Environment, Food and Rural Affairs \[2008\] EWCA Civ 431](#)

<sup>2</sup> [R \(on the application of Maroudas\) v Secretary of State for Environment Food and Rural Affairs \[2010\] EWCA Civ 280](#)

<sup>3</sup> [R \(on the application of \(1\) Trail Riders Fellowship \(2\) David Leonard Tilbury\) v \(1\) Dorset County Council \(2\) Secretary of State for Environment, Food and Rural Affairs \(3\) Mr Graham Plumbe \[2013\] EWCA Civ 553](#)

<sup>4</sup> [S.53B Wildlife & Countryside Act 1981](#)

<sup>5</sup> [The Public Rights of Way \(Register of Applications under section 53\(5\) of the Wildlife and Countryside Act 1981\) \(England\) Regulations 2005](#)

it was received, the Surveying Authority's reference and information relating to the determination of the application.

Therefore, a copy of your application, including your name and address, will be made available for the public to see in the Register. It is possible to ask for your personal information to be redacted from the Register, however, you must be able to show that the inclusion of the information would, or would be likely to:

- Cause substantial damage or substantial distress to you or another person, and
- That damage or distress would be unwarranted.

Should you make an application and feel that these criteria apply please notify the Definitive Map & Enforcement Team immediately.

## **2. MAKING AN APPLICATION**

Your application is in two parts:-

- First, you are required to complete **Form A** identifying the change you are requesting, showing the route in question on a map and enclosing copies of the evidence supporting your application.
- Second, you are required to notify the landowners using **Form B** that you have made an application and then certify to HCC on **Form C** that you have done this.

HCC refers to applications being in the "prescribed form" when only the first part has been completed, and applications being "duly made" when both first and second parts have been completed.

### **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 (or more, as appropriate\*) of the four options of; delete, add, upgrade/downgrade, or varying the particulars  
*\*e.g. if you are applying for a bridleway which is partly shown as a footpath and partly unrecorded you will need to select both "add" and "upgrade" on the form*
  - **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 Definitive Map and Statement 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 Definitive Statement about the position, width, limitations etc.
- You need to enclose a map at 1:25,000 scale or larger (e.g. 1:10,000) and identify on it the application route. *If you need help with the map grid references, or would like us to provide a map on which you can mark the application route, please contact us.*
- You need to list and supply copies of the evidence that you are relying on to support your application. If you need more room, please continue on the back of the form or attach a separate sheet. HCC requests that you number each document and list them.
  - **Documentary evidence** - see "Old Maps and Documents" under "Types of Evidence" above for examples of the documentary evidence to accompany your application. Please attach copies and give details of the document reference and the name of the record office etc. where it is kept.



- **User evidence** - please use the [user evidence form](#). Each user evidence form (one per person per route) must be accompanied by a map. **Please ask each witness to give as much information as possible and ensure that they mark the map with the route they have used (this should not be done by the applicant).** If the forms/maps have been partially completed by the applicant it reduces the value of the evidence given and could result in the route not being added to the Definitive Map.
- Please ensure that witnesses return their completed evidence forms to you.
- Collate the witness evidence forms 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 later, please make sure they have the case file reference clearly marked (we will give you this once we receive your application). **HCC recommends that you copy the forms and take note of users' names and addresses so that you can contact them if a public inquiry is to be held.**
- You need to sign and date the application.
- You are also requested to provide photographs of the route as part of the application. These need to be clearly dated and named as to what they show. This is best achieved by numbering each photo in the order they were taken, cross-referenced to a plan showing the route and marking exactly where and in which direction they were taken.

#### **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 on 0300 006 0411, or search online at [www.landregistry.gov.uk](http://www.landregistry.gov.uk). If you are unable to identify the landowner(s), you may contact HCC for permission to place notices on site. You will need to explain what efforts you have made to find the landowner(s).
- You need to send one copy of Form B to each landowner, together with a copy of the map showing the application route.
- We request that you also provide us with a copy of each landowner notice and covering letter.

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

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

#### **Form D – Summary of Modification Order Application**

- You are requested to fill in your name, address and date of application
- You are requested to describe the route of your application from public highway to public highway, including details about its length, width etc and referring to the photographs you provide. Depending on your evidence, the width may be defined by the distance between fences or hedges, or the width which has been used by the public, i.e. consider what width is used if you meet someone travelling in the opposite direction, when taking dogs on leads or holding hands with children.

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

Definitive Map & Enforcement Team Leader  
 Countryside & Rights of Way Service  
 Environment & Infrastructure Department  
 Hertfordshire County Council  
 County Hall CHN101, Pegs Lane, HERTFORD, SG13 8DN

Telephone: 01992 555279

[row@hertfordshire.gov.uk](mailto:row@hertfordshire.gov.uk)



## CHECKLIST

*(\* denotes documents required by legislation)*

- Remember to include:
- Form A\***
  - Map - at 1:25,000 scale or larger marked to show route\***
  - Form B\***
  - Form C\***
  - Form D**
  - Your evidence\*** - documentary and/or user
  - Photos** of the application route

(Don't forget to take copies of all the paperwork for your records)

# APPLICATION FOR A MODIFICATION ORDER

Wildlife and Countryside Act 1981

## The Definitive Map and Statement of Public Rights of Way in Hertfordshire

To *The Definitive Map & Enforcement Team Leader, Countryside & Rights of Way Service,*  
of *Environment & Infrastructure Department CHN101, Hertfordshire County Council, County Hall, Pegs Lane, HERTFORD, SG13 8DN.*

*name and address (postal and email) of applicant(s)*

I/we

of

email

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

<ul style="list-style-type: none"> <li>deleting the</li> </ul>	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>	from # _____ to # _____	<i>* delete as appropriate</i>
<ul style="list-style-type: none"> <li>adding the</li> </ul>	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>	from # _____ to # _____	<i># fill in grid references and/or describe start and end of routes</i>
<ul style="list-style-type: none"> <li>upgrading/downgrading* the route currently shown as a</li> </ul>	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>	from # _____ to # _____	
so that it is shown as a	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>		
<ul style="list-style-type: none"> <li>varying /adding* to the particulars relating to the</li> </ul>	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>	from # _____ to # _____	
by providing that	_____ _____		<i>explain how you want the particulars altered</i>

and shown on the map accompanying this application.

I/we attach copies of the following documentary evidence (including statements of witnesses) in support of this application:

*number and list the evidence which supports your application*

### List of Documents

Dated \_\_\_\_\_

Signed \_\_\_\_\_

Use this space to list further documentary evidence if necessary.

# NOTICE OF APPLICATION FOR A MODIFICATION ORDER

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

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

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

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

I/we made application to the Definitive Map Team & Enforcement Leader, Countryside & Rights of Way Service, Environment & Infrastructure Department CHN101, Hertfordshire County Council, County Hall, Pegs Lane, HERTFORD, SG13 8DN that the Definitive Map and Statement for the area be modified by

<ul style="list-style-type: none"> <li>deleting the</li> </ul>	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>	from # ..... to # .....	<i>* delete as appropriate</i>
<ul style="list-style-type: none"> <li>adding the</li> </ul>	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>	from # ..... to # .....	<i># fill in grid references and/or describe start and end of routes</i>
<ul style="list-style-type: none"> <li>upgrading/downgrading* the route currently shown as a</li> </ul>	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>	from # ..... to # .....	
so that it is shown as a	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>		
<ul style="list-style-type: none"> <li>varying /adding* to the particulars relating to the</li> </ul>	<ul style="list-style-type: none"> <li>*footpath</li> <li>*bridleway</li> <li>*restricted byway</li> <li>*byway open to all traffic</li> </ul>	from # ..... to # .....	<i>explain how you want the particulars altered</i>
by providing that	..... .....		

and shown on the map accompanying this notice.

**Dated**

**Signed**

.....  
.....

Use this space to add further details as necessary.

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 Hertfordshire**

To *The Definitive Map & Enforcement Team Leader, Countryside & Rights of Way Service,*  
of *Environment & Infrastructure Department CHN101, Hertfordshire County Council, County Hall, Pegs Lane, HERTFORD, SG13 8DN.*

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

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** \_\_\_\_\_





# SUMMARY OF MODIFICATION ORDER APPLICATION

Wildlife and Countryside Act 1981

## The Definitive Map and Statement of Public Rights of Way in Hertfordshire

Name and address of Applicant:	
--------------------------------	--

Date of Application .....

**Description**

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

Description:	
--------------	--

**Width**

*Please give the full width of the path you are claiming. If the width differs in different places you will need to describe the application route and its width at for that length in sections Width may be defined by the distance between fences or the width which has been used by the public. Consider how much width is used:*

- *when meeting someone travelling in the opposite direction*
- *when taking dogs on leads*
- *when holding hands with children.*

Width claimed: .....

**Nature of surface**

*Please describe the surface of the path e.g. grass, made up track, across an arable field.*

--

**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