

Monmouthshire County Council



Countryside Access Application & Guidance Pack for Public Path Orders Under the Highways Act 1980



Guide to the Procedure for Public Path Orders

These guidelines are to explain the procedure for path Diversions and Extinguishments (Closures). Public Path Orders (PPOs) can be applied for by any owner, lessees or person using land crossed by the Rights of Way (RoW).

Monmouthshire County Council (MCC) – ‘the Authority’, has a duty to assert and protect the RoW network. The Authority can exercise discretion over which path order applications are pursued and which are not.

When a PPO application is made to the Authority it will be assessed against the below listed prioritisation criteria. Public path change orders are prioritised in date of application, or referral from an officer, but may be dealt with earlier if one or more of the following applies:

- Where an application has been made to the Authority in its capacity as Planning Authority.
- Where the processing of an Order could save significant costs incurred in other Rights of Way functions.
- Where a Public Path Change Order is made concurrently with Orders made under Section 53 of the Wildlife and Countryside Act.
- Where a problem exists which cannot be solved through maintenance or enforcement.
- Where a safer route is provided
- Where a route forms all or part of a missing link in the network.
- Where a route forms part of a promoted or long distance or circular route.
- Where a route is not shown in the Definitive Map and Statement but has an anticipated high level of use, if it were to be added either by Agreement or Order
- A route is shown in the Definitive Map with lower rights and the anticipated level of use would be greater if higher rights were to be added either by Agreement or Order.

When applying for a public path order it is important to consider the following:

Landownership

The first thing to consider before applying for a public path order is that you, as the applicant, own all the land over which the diverted route is to cross. If you do not, you must obtain the landowner's written consent before you can continue. (Forms for this area available upon request). The Authority will not be able to process your application without this.

The Legal Tests

Legislation requires that certain tests must be considered for PPOs. Different tests apply to diversion and extinguishment orders as outlined below.

a) The Legal Tests for Diversion orders (Section 119)

Diversion Orders are used primarily to divert a route or part of a route, onto another line. These Orders can be made in the interests of the applicant (as stated above) and in the interests of the public.

Before making an order, the Authority must be satisfied that it is necessary to divert the path in the interests of either the public or the applicant.

The Authority must also be satisfied that:

- (i) The diverted route will be substantially as convenient to the public, when compared to the current Public Right of Way. Ignoring any temporary circumstances preventing or diminishing the use of the path by the public.
- (ii) The diversion will not alter the point of termination of the path, if that point is not on a highway, if it is on a highway then the point of termination must be to another point on the same highway, or a connected highway (i.e., it does not create a 'dead-end').

The Authority should also make sure that the route shown in the order as the alternative route is not an existing Public Right of Way.

The Authority has the power to require the applicant to cover the costs of the order and the cost of making up the new path, as well as any compensation that may be payable.

When making a Diversion Order one must also consider:

- (i) How it will affect the public use of the path and other nearby paths as a whole.
- (ii) How it will affect land served by the existing path.
- (iii) How it will affect land it is diverted through.
- (iv) Whether the diverted path is less convenient to the public.
- (v) If the order is in the best interests of the person or persons named in it.
- (vi) The affect the proposals will have on conservation needs and biodiversity (If this is unknown prior to consultation, then this will usually be dealt with through inclusion of the Authority's Biodiversity Officer and/or NRW in the pre-order consultation.)

b) The Legal Tests for Extinguishment Orders (Section 118)

Extinguishment Orders are used to extinguish all, or part, of a Public Right of Way.

It must appear to the authority, before making an Order, that it is necessary to stop up the path or way on the grounds that it is not needed for public use. They must ignore any temporary circumstances preventing or diminishing the use of the path by the public.

Before confirming an order, the Authority, or the Welsh Government (WG) must be satisfied that it is necessary to confirm the order having regard to the likely use that would be made of the path and to the effect which closure of the route would have on land served by it. The Authority or the WG must ignore any temporary circumstances preventing the use of the path by the public.

Creation of a Public Right of Way

There are several ways in which creating a new public path can come about. Under the Highways Act these are under section 25a or 26. Usually creations come about as a result of a requirement for a diversion or extinguishment. A Public Rights of Way Officer will be able to give advice about the correct act to use, procedure, tests and supply any necessary forms.

Development

Where you are applying for a public path order to allow development to take place over the line of the footpath this must be dealt with under the Town and Country Planning Act 1990. However, if the development has already been substantially, or wholly completed and has been illegally constructed over a path you will need to apply for a diversion under the Highways Act 1980 section 119.

Work Required on the new route or old route.

If you think that you want to erect a stile or gate, known as barriers, or other furniture, please indicate this on the plan attached to your application form, because to erect them without them being recorded in the Order could be classed as an obstruction.

The Authority has a [Least Restrictive Access Policy](#) and will not authorise unnecessary barriers on a new route at any time. For example, if the land will not contain animals such as sheep, horses, pigs, or cows then a gap should be made available. Types of barriers that are suitable appear in the [Authority's Furniture Design Guide](#).

Plan of the Diversion

When applying for a diversion the applicant will need to supply a plan illustrating the proposal when the application form is submitted. This plan should be at a scale of either 1:1250 or 1:2500 and it must be accurate. It is the applicant's responsibility to produce a plan which accurately illustrates the proposal, as any alteration to the plan may result in extra costs for the applicant and delays in the process.

Widths for new paths

The Authority requires a reasonable width to be made available that would be sufficient for two users to pass and be convenient for cutting machinery. In the case of a new footpath, this will be a minimum of 2 metres. In the case of a bridleway a minimum of 3 metres is required.

Only in exceptional circumstances will an alternative width be agreed. This policy is also designed to comply with the Authority's [Least Restrictive Access Policy](#).

Diversion of cross-field paths

The Highways Act prohibits the ploughing or other disturbance of a footpath or bridleway that follows the side or boundary of a field or enclosure. Restricted Byways and Byways should never be ploughed.

You may be required to enter into an agreement to maintain the surface of any path diverted onto a field boundary as well as complying with your legal obligations to cut back hedges and remove the trimmings to ensure that the path remains at its full width.

Fees

The Authority charges a fee for the administrative work involved with a PPO application in accordance with the *Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (as amended)*. This means you will have to pay the actual costs involved including press advertising costs.

The Authority retains the discretion to waive, or partially waive, costs where it considers it appropriate and in the public interest.

You will be invoiced at the conclusion of the PPO process at whatever stage this concludes on a case-by-case basis.

The fee charged in each case is dependent on the complexity of the case and is directly related to the time spent on processing the application. The approximate scale of charges for PPO are as indicated on the Procedure and Cost Schedule attached.

Time span

The average length of time taken to process an application to confirmation is around twelve months. However, if the matter is submitted to the WG, and they call a public inquiry or hearing, it may take much longer.

Please note that until a Public Path Order is confirmed the existing route must remain available for use.

If There Are Objections to An Order

PPOs are subject to public consultation.

A formal objection must be made in writing to the Authority within the set period for objections, usually 28 days from the making of the order. If objections are received, then an officer will enter into dialogue with the objector. If the objections are maintained, the Authority must send the order to the WG for determination.

Procedures Involved with a Public Path Order under the Highways Act

The procedure for dealing with the diversion or extinguishment of footpaths and bridleways is complex and can be time consuming. The basic stages are detailed in the attached Process and Cost Schedule.

Data Privacy Summary

Processing of applicant's personal data by Monmouthshire County Council is necessary to process public rights of way legal orders. Without this information, we will not be able to fulfil this task.

Your details will be legitimately shared within a partnership area in a safe and secure manner. This includes the Planning and Environment Decisions Wales, Contractors, Legal Services, Highways, MonLife Countryside Access, Green Infrastructure & Planning. Your personal details will not be shared further, unless in relation to safeguarding or other legal obligations.

Your records will be safely stored and retained in line with our retention policy unless we need to retain them under another lawful basis. You have a number of rights in relation to the information including the right of access to information we hold about you and the right to complain if you are unhappy with the way your information is being processed.

Should you need to make a complaint about the way your data has been processed, please contact dataprotection@monmouthshire.go.uk or if you are not fully satisfied you may contact the Information Commissioner's Office online at www.ico.org.uk/concerns or via their helpline: 0303 123 1113.

Beware There Are No Guarantees

The Authority cannot guarantee that any application will proceed to the making of an order, nor can the Authority give any assurance that all applications will be successful. Applicants must be aware that they may incur costs without the order being successful. The Authority will endeavour to resolve objections if possible and applicants will be able to withdraw their applications prior to objected orders being sent to WG for determination. In these circumstances the Authority will only recover costs up to the point that this event occurs.

EVERY EFFORT HAS BEEN MADE TO ENSURE THE ACCURACY OF THE INFORMATION GIVEN, HOWEVER, THIS GUIDE IS NOT INTENDED TO BE A DEFINITIVE STATEMENT OF LAW, NOR CAN ANY RESPONSIBILITY BE ACCEPTED FOR AMENDMENTS, ERRORS, OR OMISSIONS.

PPO – Process and Cost Schedule

Stage	Details	Approximate Cost
1. Initial investigative work	Feasibility of proposal, guidance provided, check application form, prepare cost schedule, phone calls and map work. Set up file and enter details into CAMS computer system.	£100
2. Research into history and status of rights of way	Check for any claims. Check routes on the Definitive Map, check for any previous orders, check path file history and any other applications.	£100
3. Site visit	Look at feasibility of route on the ground. Discuss and check final proposal with applicant. Draw up detailed site plan, schedule of works, including path widths. Take photographs.	£50-£100 + Mileage Dependent upon distance and time spent at site
4. Pre-Order consultation process	Consultation emails and plans sent to statutory undertakers and prescribed bodies	£50
5. Officer time considering and responding to pre-order consultation responses	Recording and analysing replies and responding as necessary. Negotiations/ mediation with any objectors	£50-£100 Dependent upon any objections being received
6. Assessment of legal implications	Seek legal advice with MCC lawyer	£25
7. Preparation of delegated powers report	Detailing background to application, proposal, and legal tests. Detailed plan to be included showing proposal	£150
**Objections received?	<i>If there are objections to the order at this stage, then the below Objections Schedule applies.</i>	<i>Additional Costs, see below</i>

Stage	Details	Approximate Cost
8. Creation of Legal Order (making)	Drafting and sealing of legal order and notice. Send copy of the legal order/notice/plan to all affected people/bodies and statutory consultees.	Included in Legal Costs* unless otherwise stated.
9. Order Notices to the press	Notices appear in the local newspaper for public consultation	£500-£600 Dependent upon size of notice
10. Site visit	Copy of notices and plans posted at site for public consultation	£50 + Mileage Dependent upon distance and time spent at site
***Objections received?	<i>If there are objections to the order at this stage, then the below Objections Schedule applies.</i>	<i>Additional Costs, see below</i>
11. Site visit	Attend site to assess suitability and availability of new route.	£50 + Mileage Dependent upon distance and time spent at site
12. Creation of Legal Order (confirmation)	Drafting and sealing of legal order and notice. Send copy of the legal order/notice/plan to all affected people/bodies and statutory consultees.	Included in Legal Costs* unless otherwise stated
13. Order Notices to the press	Notices appear in the local newspaper	£400-£600 Dependent upon size of notice
14. Site visit	Copy of notices posted on site.	£50 + Mileage Dependent upon distance and time spent at site

***Legal Costs**

Legal Costs are set at £225 per PPO.

NB If a PPO is the subject of unresolved objections, or if unforeseen legal costs arise, then the set fee is no longer applicable.

The average cost of an unopposed PPO is in the region of £2,000.

The average cost of an opposed order is in the region of £3,000.

The Applicant or the Authority can withdraw the application at any stage prior to the order's confirmation prior to stage 11. Charges to the relevant stage will be incurred.

The fees stated above are only a guide and every effort will be made to ensure costs are kept to a minimum.

Mileage is charged at 50p per mile.

Objections Schedule

Item	Details	Approximate Cost
** If Objections received at stage 7		
Prepare report for Rights of Way Advisory Panel	Detailing background to application, proposal, and legal tests. Detailed plan to be included showing proposal.	£150
Site visit by Rights of Way Advisory Panel	If required by the panel to determine the making of the order.	£300

Item	Details	Approximate Cost
***If objections at stage 10 Report prepared for WG	Full file of evidence compiled for submission to WG by Rights of Way Officer and Legal Department	£500 NB - This can increase significantly dependent upon the nature and extent of the objections.

Potential Additional Costs Schedule

Item	Details	Approximate Cost
Other communications	Additional emails and phone calls in relation to the order which are not covered by the above	£25-£100
Site visits	Any additional visits to those detailed above, as required	£50 + Mileage Dependent upon distance and time spent at site



Countryside Access
Monmouthshire County Council
County Hall
Usk
NP15 1GA

HIGHWAYS ACT PUBLIC PATH ORDER(S)

Undertaking to Pay Costs Form

I undertake to pay the costs incurred in processing the Public Path Order for:

Public Right(s) of Way No(s).

Community of

I understand that the cost will be the actual costs incurred by the Authority to process the application as specified in the Process and Cost Schedule. I understand that I will be required to pay these costs in full at the conclusion of the process.

I understand and agree to pay the costs for carrying out the necessary work to provide the new route to the satisfaction of the Authority. Where it has been agreed that the Authority, or its agents, should carry out any works and supply any furniture (including bridges) on behalf of this application, I understand that I will be invoiced for the total costs of the furniture and installation (unless agreed otherwise in writing with Monmouthshire County Council).

I also understand that I must pay any compensation that may arise as a consequence of the diversion/creation/extinguishment of a path onto or affecting land not in the control of the applicant.

Name
(Please print): _____

Signed: _____

Address
(For invoicing): _____

Date: _____



HIGHWAYS ACT 1980, SECTION 119

APPLICATION FOR AN ORDER TO PERMANENTLY DIVERT PART OR ALL OF A PUBLIC RIGHT OF WAY

The following questions should be answered as fully as possible, and the form returned to Countryside Access, Monmouthshire County Council, County Hall, Usk, NP15 1GA.

You must also send:

1. A plan not less than 1:2500, showing the Public Right of Way concerned and with the line of the diversion clearly marked, along with landownership details.
2. Any relevant landowners/owner/occupiers' agreements to the proposal.
3. A signed "Undertaking to Pay Costs Form".

SECTION A: GENERAL

Name & address of applicant

Name: _____

Address: _____

Email: _____ Telephone: _____

Name & address of agent (only complete if applicable)

Name: _____

Address: _____

Email: _____ Telephone: _____

If you do not own all the land on which any part of the path to be diverted runs, has the consent of the landowner(s) been obtained in writing? YES / NO

(If YES please attach).

Name: _____

Address: _____

Email: _____ Telephone: _____

Have you obtained the written consent of any Lessee or Tenant or Occupier YES/NO
(If YES please attach consent)

Name of Lessee, Occupier or Tenant:

Address: _____

Email: _____ Telephone: _____

SECTION B: PUBLIC RIGHT (S) OF WAY TO BE DIVERTED

Name of Community or Communities in which the affected path(s) are located:

Number(s) of the Public Right(s) of Way as indicated on the Definitive Map (if known).

Path Number(s)

General description of path(s)

Status: The path(s) affected are *footpath/bridleway (*delete the term that does not apply)

SECTION C: REASON FOR DIVERSION

Section 119 of the Highways Act 1980, as amended by Schedule 16 para.5 of the Wildlife and Countryside Act 1981, permits diversions of public footpaths and bridleways on the grounds that it is expedient in the interests of:

- (i) the owner, lessee, or occupier and/or
- (ii) the public.

Please indicate whether this application serves the interests of the owner, etc., and/or the public and give specific reasons why.

(i) _____

(ii) _____

What effect will the diversion have on the convenience and enjoyment of the path by the public?

SECTION D: DECLARATION

(Please read carefully, amend as necessary and then sign).

1. I have read and understood the guidance notes attached to this application. I agree to comply with the following conditions in respect of this application:
 - (i) The proposed alternative route must be at least equal in construction to the length of the route it is replacing and have an equal or improved surface.
 - (ii) The proposed alternative route must be constructed to the satisfaction of Monmouthshire County Council as the Highway Authority.
 - (iii) The siting and type of any new bridges, stiles, gates, or fencing must be agreed with the Authority prior to erection and maintained at the applicant's own expense in the future (unless specifically agreed otherwise in writing with the Authority).
 - (iv) Any necessary drainage works are to be carried out at the applicant's expense and constructed to the specification and satisfaction of the Authority.
 - (v) The diverted route(s) to be signposted and waymarked to the satisfaction of the Authority.
2. If the Authority agrees to make the order for the diversion of the path(s) I will carry out such work on the diverted route of the path as may be specified by the Authority, at my own expense, to bring the route into a fit condition for public use at such time as the diversion order can be confirmed and certified.
3. I understand that no authority for the diversion of a Right of Way is conferred unless and until an Order has been made and confirmed and notice of its making and confirmation has been published.
4. I declare the Rights of Way(s) to be diverted is/are in no way obstructed and that it/they are fully available to the public and I undertake that it/they shall in no way be obstructed before the Order comes into operation.
5. I declare that to the best of my knowledge and belief all, the particulars given are true and accurate and I hereby apply for the diversion of the route(s) I have detailed above.

Signed: **Dated:**.....



HIGHWAYS ACT 1980, SECTION 118

APPLICATION FOR AN ORDER TO PERMANENTLY EXTINGUISH PART OR ALL OF A PUBLIC RIGHT OF WAY

The following questions should be answered as fully as possible, and the form returned to Countryside Access, Monmouthshire County Council, County Hall, Usk, NP15 1GA.

You must also send:

1. A plan not less than 1:2500, showing the Public Right of Way concerned and with the line of the extinguishment clearly marked, along with landownership details.
2. Any relevant landowners/owner/occupiers' agreements to the proposal.
3. A signed "Undertaking to Pay Costs Form".

SECTION A: GENERAL

Name & address of applicant

Name: _____

Address: _____

Email: _____ Telephone: _____

Name & address of agent (only complete if applicable)

Name: _____

Address: _____

Email: _____ Telephone: _____

If you do not own all the land on which any part of the path to be extinguished runs, has the consent of the landowner(s) been obtained in writing? YES / NO
(If YES please attach).

Name: _____

Address: _____

Email: _____ Telephone: _____

Have you obtained the written consent of any Lessee or Tenant or Occupier YES/NO
(If YES please attach consent)

Name of Lessee, Occupier or Tenant: _____

Address: _____

Email: _____ Telephone: _____

SECTION B: PUBLIC RIGHT (S) OF WAY TO BE EXTINGUISHED

Name of Community or Communities in which the affected path(s) are located:

Number(s) of the Public Right(s) of Way as indicated on the Definitive Map (if known).

Path Number(s)

General description of path(s)

Status: The path(s) affected are *footpath/bridleway (*delete the term that does not apply)

SECTION C: NEW PUBLIC RIGHTS OF WAY TO BE CREATED

Is there to be a new route created to replace the extinguished route/s YES / NO

If the applicant does not own or control the land over which the new right of way is to be created, has the consent of the landowner(s) been obtained? YES / NO

Name: _____

Address: _____

Email: _____ Telephone: _____

SECTION D: REASON

Section 118 of the Highways Act 1980 permits footpaths and bridleways to be extinguished where it can be shown that the path is not needed for public use.

Please indicate the reason for requesting this Extinguishment:

What effect will the closure of the path have on the land served by it?

SECTION E: DECLARATION

(Please read carefully, amend as necessary and then sign).

1. I have read and understood the guidance notes attached to this application and agree to comply with the following conditions in respect of this application:
 - (i) Any routes proposed to be created must be at least equal in construction to the length of the route it is replacing.
 - (ii) The alternative route must be constructed to the satisfaction of the Authority.
 - (iii) The siting and type of any necessary gates, fencing or other furniture on the route to be dedicated must be agreed with the Authority prior to erection.
 - (iv) Any necessary drainage works are to be carried out at the applicant's expense and constructed to the specification and satisfaction of the Authority.
 - (v) The alternative route to be signposted and way marked to the satisfaction of the Authority.
2. I understand that no authority for the extinguishment of a Public Right of Way is conferred unless and until an Order has been made and confirmed and notice of its making and confirmation has been published.
3. I declare the Public Rights of Way(s) to be extinguished are in no way obstructed and that it/they are fully available to the public and I undertake that it/they shall in no way be obstructed before the Order comes into operation.
4. I am aware that if an order is made and confirmed the Authority will make arrangements, where necessary, to remove any foot or bridleway bridges on the route that has been closed.
5. I declare that to the best of my/our knowledge and belief all the particulars given are true and accurate.

Signed: **Dated:**.....