

Diverting Public Rights of Way Highways Act 1980 Section 119

Please read this information carefully before completing the attached application form, as incorrect or incomplete information can cause delay or additional costs. You should discuss any proposals with the County Council's Rights of Way Officer on site to ensure your application is suitable. To arrange for the Rights of Way Officer to visit you, please telephone 03000 265342.

Please be aware that an application for a diversion does not guarantee the diversion of a path. We will normally expect for any existing path/s, subject to diversion proposals, to be open and available until an Order has been made and confirmed.

The County Council is currently receiving an influx of Definitive Map Modification Order applications prompted by the 'cut-off' date of 01 January 2026, introduced by the Countryside and Rights of Way Act 2000, based on historical documentary evidence under Wildlife and Countryside Act 1981 Section 53 and Schedule 14. Applicants should be aware of the possibility that additional and/or higher rights may exist over their land and a confirmed diversion order would only affect the existing rights, not any rights added to the Definitive Map at a later date under the 1981 Act. Please contact the Rights of Way Officer if you have any concerns.

Highway legislation

When considering an application under section 119 of the Highways Act 1980 the County Council has to take certain factors into account. In summary it has to balance the interests of the owner/occupier of the land who has applied for the diversion against that of the path users, and will consider how convenience and enjoyment of path users are affected by the proposals. Section 119 is described in further detail later.

Costs

On receipt of a properly submitted application, we will write to you detailing the likely cost of the diversion and ask you to sign a declaration that you agree to pay these costs, any compensation that may become due, and that you will carry out the works necessary to create a new route. If you are diverting any part of a path onto someone else's land we will expect you to provide a written agreement from the other party and you should be aware that that party does have a right to claim compensation once an order is confirmed. However, in such circumstances you may wish to come to your own agreement with the other party.

The County Council will normally expect you to pay for the full costs of a diversion which on average amounts to approximately £2500. However, if you are diverting more than one path the costs will be greater. The costs are split into 2 payments, the first payment is payable once the Order is Made and advertised, the 2nd is payable once the Order has been Confirmed. These costs include the administration of the diversion as well as two newspaper adverts which are required by legislation. We will only waive costs in situations of financial hardship (to be evidenced e.g. if you are in receipt of a means tested benefit) or if the proposal adds significant public benefit to the paths network e.g. the creation of a new footpath in addition to the diversion. Regulations about costs mean that if your application has to be forwarded to the Secretary of State you will not be required to pay any additional costs, even if the matter is heard at a public inquiry.

Initial consultation

We will then consult the Parish Council in the area and organisations prescribed by specific regulations (DOE Circular 1/09 -Ramblers' Association, British Horse Society, Byways and Bridleways Trust, etc). We will ask them to reply within one month. Where no objections are received we will present the proposals to the Council's Director of Regeneration, Economy & Growth and ask to approve the making of the diversion order.

We must deal with the proposals differently where objections are lodged, whatever the nature of the objection. Sometimes objections are unreasonable and we will endeavour to get these withdrawn. Other times consultees may come up with an alternative proposal and we will come back to you and discuss these with you if we consider it appropriate. In some circumstances we might arrange to meet the objector on site to discuss further and for you to attend if you wish. If we are left with an objection at this stage we must present the proposals to the Council's Highways Committee. This is a group of Councillors who will meet especially to consider the application. They will visit the site and they will hold a meeting locally to the path. All parties can make representations to the Committee. The Committee will either approve the making of a diversion order or decide to reject the proposal. If they reject the proposal then there is no right of appeal against their decision other than by way of a judicial review.

The diversion order

A diversion order will be made and is subject to strict rules. It must be advertised at each end of the path/s affected and in the local press, stating the effect of the order and inviting representations within a period of not less than 28 days. It will specify details of the new path including its route, width (normally 1.8 metres for a footpath and 3 metres for a bridleway). It will be served on all owners and occupiers of the land affected, the parish council and path users organisations. If any objections are lodged we call this an opposed order whereas if no objections are lodged it is unopposed.

The Council may confirm an unopposed order. Normally the order will specify that the new path will be created 28 days after confirmation and the old path closed once we are satisfied that the works to create the new path have been completed satisfactorily. We will expect you to erect any structures such as stiles, gates or bridges but we will move any signposts and ensure the diversion is adequately waymarked. It is possible for someone to contest a confirmed order but this has to be to the High Court and would be for a procedural or technical reason. No such challenge has ever been made to a diversion order in County Durham.

If the order is opposed we will try to seek the withdrawal of the objections. However, often they are the same objectors as at the consultation stage and negotiation will have already been attempted. Whatever the objection we must send the order to the Secretary of State for the Environment, Food and Rural Affairs who will appoint an independent inspector to consider the proposal. The inspector will normally decide to deal with the matter either by an exchange of written representations between the Council, applicant and objector. Sometimes, where a proposal will be heard at a public inquiry at which all the parties can make their case.

Time scales

The average time for an unopposed order to be completed is between 6 and 12 months. Where an order is opposed it is likely to take about 2 years.

Your application

It is important that you provide us with as much information as possible on your application so feel free to provide further information on separate sheets of paper. You should clearly and in detail make the case for why the diversion is in your interests. This is essential for when we are consulting and at a later stage e.g. if we have to present the case to the Highways Committee or Secretary of State. Although you will always be given an opportunity to present your case we will have to put your case forward for you as well.

Please ensure that you provide us with the correct information about landownership and occupancy. This is crucial and misinformation has invalidated some orders in the past with additional costs having to be charged to applicants.

When we have to consider how path users are affected by a proposal we will look at a number of factors including distance, surface type, gradient and structures on a path. A proposed path which is significantly longer or circuitous than the existing route would be unsuitable as would a new path with an overabundance of stiles or gates to cross in comparison to the existing route. We will generally not accept gates or stiles on new routes which are not for the purposes of stock control. A surfaced track being diverted onto a route across an arable field is unlikely to be acceptable as would a flat well drained route diverted onto a rough and poorly drained area.

Completed application forms should be returned to the Access and Rights of Way Team, Durham County Council, County Hall, Durham, DH1 5UQ.

Section 119 of the Highways Act 1980

Section 119 of the Highways Act 1980 gives a County Council a discretionary power to make a Diversion Order where it appears to the Council that:

- a it is in the interests of the owner, lessee or occupier of the land crossed by the path; or
- b it is in the interests of the public.

A diversion order can only be made which will not alter a point of termination of a path except to another highway connected with it and which is substantially as convenient to the public.

A Council may not confirm a diversion order unless satisfied that the diversion will not be substantially less convenient to the public and that it is expedient to confirm the order having regard to the effect which:

- a the diversion would have a public enjoyment of the path as a whole;
- b the diversion would have on land served by the existing path, and
- c the new path would have on land over which the right of way is to be created.

A path which is diverted from land in one ownership to another may give rise to claims for compensation. Therefore the Council will normally require an applicant (or joint applicants) to defray or make a contribution to:-

- a any compensation payable to any party or;
- b any expense of the Council in facilitating the convenient exercise of any new path.

The Council, in determining a diversion application, has a duty to have due regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna and geological and geographical features.

Procedure for public path orders

