

Public Rights of Way Legal Order Pack

Guidance Notes

- Diversion or stopping up of highways
(footpaths, bridleways and restricted byways)
- Notes and application form

Town and Country Planning Act 1990 - Section 257 (For development)

Highways Act 1980 – Section 118 (Extinguishment)

Highways Act 1980 – Section 119 (Diversion)

Guidance Notes

Legislative tests

The legislative tests, that a particular application must meet, depend upon the type of order being sought.

➤ PUBLIC PATH CREATION ORDER

- **section 26 Highways Act 1980:** A new right of way may be created where it can be shown that there is a need for it.

➤ PUBLIC PATH EXTINGUISHMENT ORDER

- **section 118 Highways Act 1980:** A right of way may be extinguished where it is not needed for public use.

➤ PUBLIC PATH DIVERSION ORDER

- **section 119 Highways Act 1980:** A right of way may be diverted where it can be shown that it is in the interest of the relevant landowner and/or the public to do so, but only where: i) the diverted route would not be substantially less convenient to the public; ii) the diversion would not alter any point of termination of the path, other than to another point on the same highway, or a connected highway; iii) the effect the diversion would have on public enjoyment of the path as a whole must also be taken into account before a decision is made.

➤ RAIL CROSSING EXTINGUISHMENT / DIVERSION ORDER - section 118A/119A

Highways Act 1980: A right of way which crosses a railway may be extinguished (section 118A) or diverted (section 119A) where it can be shown that it is expedient to do so in the interests of public safety, but only if it is not possible to make the crossing safe. There is a special application for this type of order. Please contact rightsofway@southglos.gov.uk

➤ SPECIAL EXTINGUISHMENT/ DIVERSION ORDER - section 118B/119B

Highways Act 1980: A right of way may be extinguished (section 118B) or diverted (section 119B) for reasons of school security {for the purpose of protecting pupils and staff from violence; threat of violence; harassment; alarm or distress arising from unlawful activity; any other risk to their health and safety arising from such activity}, or, if it falls within a designated high crime area, for reasons of crime prevention.

➤ SSSI DIVERSION ORDER - section 119D

Highways Act 1980: A right of way may be diverted in order to protect a Site of Special Scientific Interest.

➤ PUBLIC PATH ORDER (STOPPING UP OR DIVERSION) - section 257 Town & Country

Planning Act 1990: A path may be diverted or stopped up if it is necessary to enable development to take place.

Diversion and stopping up or extinguishment of footpaths, bridleways and restricted byways

1. The closure or diversion of a right of way can only be achieved by proper legal process. The process for deciding whether a right of way should be diverted or closed is a public one. The procedures are designed to ensure that the public are made aware of the change that is proposed and that anyone may have the opportunity to state their views and have them taken into account before a final decision is made. Planning permission does not permit obstruction of public rights of way or erection of new barriers.

2. There are legal tests for the different types of path order that have to be satisfied in each case. These are described in the booklet available from Natural England NE112.

3. Period for making an order - The minimum time for making an order will be at least 6 – 9 months from the date of receiving all the information required. This is allowing for the informal consultations, the decision report and the statutory objection period of 28 days from the date of publication of notice that an order has been made. However it must be emphasised that once the order has been made and confirmed, it does not always become operative until the new route has been certified by the council that all works relating to the route have been provided and completed to the council's satisfaction. Until that time the original route of the path remains highway and is protected by highway law.

4. Objections - If any objections are received to the order, the applicant will receive details of the grounds for objection and given a chance to comment to enable the council to attempt to secure the withdrawal of the objection. Where objections cannot be resolved the order may be referred to the Secretary of State for confirmation. The Secretary of State can consider the objections to the order by written representations, hearing or public inquiry.

5. Operative Date - The route to be stopped up or diverted will remain highway until the order comes into operation. Therefore any development which affects a public right of way cannot be substantially complete to confirm the order nor should the public right of way be obstructed until the new route has been certified and the order becomes operative.

As highway authority the council is under a statutory duty to protect and assert the public's right to use and enjoy all highways, including footpaths, bridleways and restricted byways in its area.

If any obstruction is not removed, the council has powers to take enforcement action including the service of a notice, removal of the obstruction and the recovery of the expense of doing so.

If the development will temporarily affect the right of way then the developer must apply for a temporary closure of the route (preferably providing a suitable alternative route).

A guide to definitive maps and changes to public rights of way is available online and includes advice on the procedures and test required
www.gov.uk/government/publications/definitive-maps-of-public-rights-of-way-change-the-legal-records

6. Works required - The works and standard of the new route must be agreed with the relevant case officer before the order is made. This will form part of the order making process. Guidance and advisory notes are available to the developer regarding the required standards.

7. Other Guidance - The Rights of Way Improvement Plan (“ROWIP”) for the area refers to a public path order policy (“the policy”) that sets out the standards expected for new paths. The policy is available from rightsofway@southglos.gov.uk. The general principle in the policy is that the new path must be at least like for like or offer improvement e.g. no steep gradients or inaccessible structures on the new route introduced, nor are steps to be included, any gates are to be in line with the least restrictive access principle. Defra have issued guidance on acceptable structures on rights of way to ensure compliance with the Equality Act 2010. Government Circular 1/09 in section 7, gives further advice on planning permission and rights of way, including the avoidance of the use of estate roads for the new route; preference being given to the use of made up estate paths through landscaped or open spaces away from vehicular traffic. The Local Plan (PSP10) guides developers in the provision of active travel routes in development.

8. Charges - The council makes a charge for processing a public path order under the Highways Act or the Town and Country Planning Act. The charges are set out in the scale of charges. Invoices will be sent in respect of payment on the making, confirmation and certification of the order.

9. Return of the completed application form -

A copy of the completed application form together with the signed scale of charges and the required plan should be sent to South Gloucestershire Council at the postal address or the email address’ below:

**Highways Act Order Applications
South Gloucestershire Council
Department of Environment and
Community Services**

Public Rights of Way, Streetcare,
Transport and Waste,
PO Box 1954, Bristol BS37 0DD

EMAIL: rightsofway@southglos.gov.uk

Planning Order Applications

South Gloucestershire Council
Department of Environment & Community
Services

Planning and Development Control
PO Box 1954
Bristol BS37 0DD

EMAIL: planningapplications@southglos.gov.uk

PLEASE NOTE: Highways Act Path Orders are processed by Public Rights of Way
EMAIL: rightsofway@southglos.gov.uk

Town and Country Planning Act Orders
by Development Control

Temporary Closures by Streetworks

EMAIL: streetworks@southglos.gov.uk

Guidance on the plan to be provided with the application

Please see the example plans below that describe the information and type of plan that must accompany the application.

EXAMPLE PLAN TO ACCOMPANY TOWN AND COUNTRY PLANNING ACT DIVERSION



1 Use lettering to label the existing and proposed route when the path changes in direction, width etc.

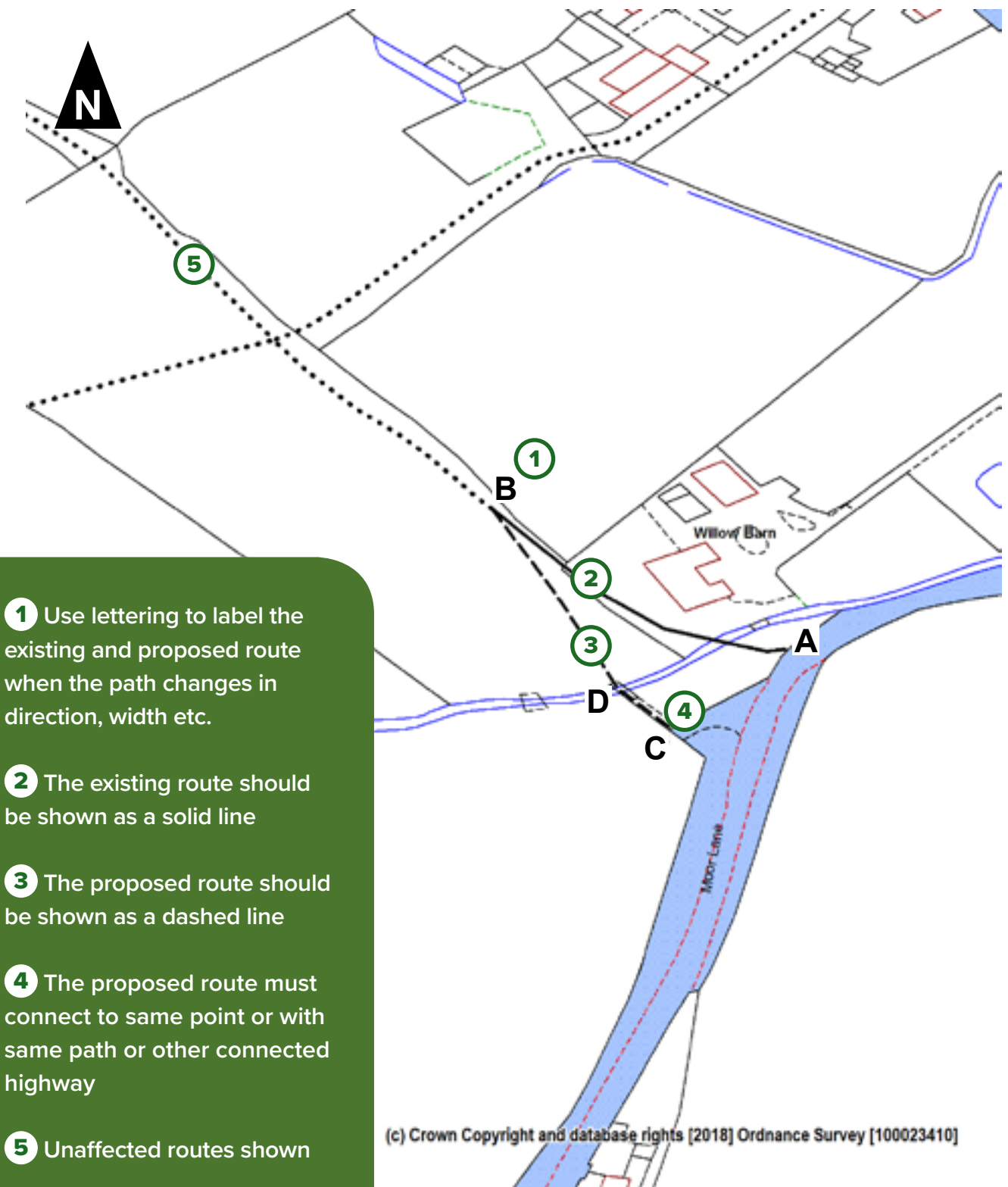
2 The existing route should be shown as a solid line

3 The proposed route should be shown as a dashed line

4 Avoid the use of estate roads where possible

Please supply plan at 1:2500 or less.

EXAMPLE PLAN TO ACCOMPANY HIGHWAYS ACT DIVERSION APPLICATIONS



① Use lettering to label the existing and proposed route when the path changes in direction, width etc.

② The existing route should be shown as a solid line

③ The proposed route should be shown as a dashed line

④ The proposed route must connect to same point or with same path or other connected highway

⑤ Unaffected routes shown

**Please supply plan at
1:2500 or less.**

Typical public path order procedure

REGISTRATION

Applicant submits application form obtained from case officer or online.



ALLOCATION TO CASE OFFICER

8–16 weeks depending on committee cycle and consultation completed.



REPORT SCHEDULE

Circulated schedule or to relevant sub committee. Case officer explains the legal tests and proposal to Members. Decision to make order.



LEGAL SECTION

Committee resolution provided to legal for order drafting.



DRAFT ORDER

Copy of draft order sent to applicant. Once agreed order is made and publicised for at least 28 days for objections or representations to be lodged.



FIRST INVOICE



NO OBJECTIONS RECEIVED

Authority may confirm the order.



SECOND INVOICE

AUTHORITY CERTIFY THE ORDER

After seeking withdrawal of objections made the authority may abandon the order or may refer order to Planning Inspectorate.



THIRD INVOICE

OBJECTIONS RECEIVED

After seeking withdrawal of objections made the authority may abandon the order or may refer order to Planning Inspectorate.



PLANNING INSPECTORATE DECIDES



The decision may be to confirm the order or to not confirm the order.

ORDER BECOMES OPERATIVE: The old route is stopped up

Your application

Please tick the appropriate application type

A Please tick if applicable

APPLICATION FOR A PUBLIC PATH DIVERSION ORDER FOR DEVELOPMENT

*Town And Country Planning Act 1990 - Section 257
Local Government Act 1972 - Section 111*

**POST TO: South Gloucestershire Council
Department of Environment and
Community Services**

Planning and Development Control
PO Box 1954
Bristol BS37 0DD

EMAIL: planningapplications@southglos.gov.uk

B Please tick if applicable

APPLICATION FOR A PUBLIC PATH DIVERSION ORDER FOR LANDOWNERS

*HIGHWAYS ACT 1980 - Section 118 (Extinguishment)
or Section 119 (Diversion)*

**POST TO: South Gloucestershire Council
Department of Environment and
Community Services**

Public Rights of Way, Streetcare,
Transport and Waste
PO Box 1954, Bristol BS37 0DD

EMAIL: rightsofway@southglos.gov.uk

1. DETAILS

PLEASE USE BLOCK CAPITALS

NAME OF APPLICANT/DEVELOPER

(Include full names; if a partnership names
and addresses of all partners)

ADDRESS

(if a limited company address of registered
office together with contact name and
telephone number)

Postcode

Telephone

Email

2. HIGHWAYS TO BE DIVERTED OR STOPPED UP

PLEASE USE BLOCK CAPITALS

ROUTE TO BE DIVERTED/EXTINGUISHED (please enter details of the existing footpath,
bridleway or restricted byway to which the application relates) ("the Existing Route")

PROPOSED ROUTE (please enter details of the proposed new route of the footpath/bridleway
or restricted byway) ("the Proposed Route")

3. REASON FOR APPLICATION

e.g. planning application reference and location of development or other reasons - see guidance notes

4. OWNERSHIP

Please select where appropriate

I am / We are the owner / lessee / occupier **OR**

I am / We are making this application on behalf of the owner / lessee / occupier of land at:

You will need to show the Council that you own all the land over which the new path would run or that you have the written agreement of any other land owner affected by the proposed diversion. You will need to complete one of the statements below and attach copies of the relevant documents e.g. a copy of your Land/Charge Certificate

I am / We are the owner of the land over which the Proposed Route would run and attach details of my/our ownership and agree to the creation of the proposed route

I / We attach the written consent of each owner over whose land the Proposed Route would run and attach details of my/our ownership

5. PLANS

I / we attach a plan showing the Existing Route as a continuous bold black line and the Proposed Route as a bold black broken line

- The map should be of a scale of not less than 1:2500
- Each section of either route should be lettered individually, e.g. A-B, B-C, etc.
- Lengths between the points should be described on the form;
Grid references should be given for each point to at least 10 figures preferably 12.
- See example plans on page 5 and 6 of the guidance notes. If you have any difficulties preparing the plan please contact Public Rights of Way - rightsofway@southglos.gov.uk

Scale of charges associated with Public Path Orders

1. Public Path Orders to which this scale of charges applies:

TOWN & COUNTRY PLANNING ACT 1990 - Section 257:

- Public Path Stopping Up Order • Public Path Diversion Order

HIGHWAYS ACT 1980:

- Public Path Diversion Order (Section 119) • Public Path Extinguishment Order (Section 118)
- Rail Crossing Diversion Order (Section 119A) • Rail Crossing Extinguishment Order (Section 118A)

2. Agreement to Pay Charges

Any person applying for one of the Public Path Orders identified above, to be made by the council are be required to enter into an agreement with the council providing for payment by the Applicant of:

- (i) the council's administrative and legal costs of processing the Order (including VAT); and
- (ii) the advertising costs associated with the publication of statutory notices required by the appropriate legislation
- (iii) any compensation which becomes payable in consequence of the coming into force of an order

Administrative costs falling within (i) above will include notification to landowners, statutory undertakers, prescribed organisations, other local authorities and such other persons as may be required; posting notices on site and elsewhere; site inspections; research into the status and previous history of the path or way; negotiating with applicants and other interested parties prior to the making of the order; and preparation of reports to Committee or circulated schedule and of the relevant orders and notices.

The Agreement will provide for payments to be made by the Applicant to the Council at each of the following stages of processing the Order, namely:

- (i) on the making of the Order
- (ii) on the confirmation of the Order
- (iii) on the certification of the Order

3. Scale of Charges

The basis of charge for the full recovery of administrative costs associated with processing the order will be an Hourly rate (plus VAT) as set out online in the Fees and Charges sheet:

www.southglos.gov.uk/transport-and-streets/transport or **www.southglos.gov.uk/transport-and-streets/transport/public-rights-of-way/responsibilities-for-rights-of-way** or please check with the case officer. Advertising costs will be recharged on the basis of actual cost.

An online version of this guidance/form can be found at:

www.southglos.gov.uk/public-rights-of-way

4. Refunds

Applicants may request a refund of charges paid to the council in any of the following circumstances:

- (i) Where the council fails to confirm an unopposed order;
 - (ii) Where, in the case of an opposed order, the council has without the agreement of the Applicant failed to submit the order to the Secretary of State for confirmation, without the agreement of the applicant;
 - (iii) Where proceedings preliminary to the confirmation of a public path creation order are not taken concurrently with proceedings for a public path extinguishment order; or
 - (iv) Where the order cannot be confirmed because it has been invalidly made.
- (i) If it can be shown that the proposed order is likely to be of significant benefit to rights of way users, e.g. the creation of additional paths as part of a wider improvement of the rights of way network; or an agreement to undertake or assist with the maintenance of the right of way, the Council may consider waiving all or part of the charge.

5. Indication of Charges

Whilst it is difficult to predict the administration and advertising costs likely to be incurred in the processing of a Public Path Order, the fees and charges sheet is provided for illustrative purposes, setting out the average cost of processing an unopposed order and the likely maximum charge for the financial year in which the application is made.

6. Declaration

Please sign below to confirm that you have read and understood the information set out in this document regarding the scale of charges associated with the Public Path Order for which you are applying, and that you agree to pay them whether or not the order is confirmed.

1. I/we apply for diversion/extinguishment/stopping up of the highway(s) described above and declare to the best of my/our knowledge and belief that all particulars given are true or accurate and that I/we have read and understood the information set out in this document.
2. I/we agree to carry out to the council's satisfaction any works properly requested by the council to close the existing route and/or make the proposed route ready for use by the public.
3. I/we have read and understood the information set out in this document regarding the scale of charges associated with the public path order for which I/we are applying and that I/we agree to pay them.

Signed

Date

