

Legal and Development
Review of the Definitive Map Statement of Priorities

Report of the Head of Highways, Capital Development and Waste

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that:

(a) Definitive Map Review Policy Statements DM1A and DM1C/2 be amended to:

DM1A/3 Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2020; and

DM1C/3 New claims which arise in a parish where the review has been completed will be deferred until the whole of the County has been reviewed. However, exceptions may be made in line with the criteria in policy DM1B/2 above.

(b) that Policies DM1B/2 and DM1D remain unchanged.

1. Legislative Background

The Definitive Map and Statement (the 'Definitive Map') is the legal record of all public rights of way (public footpaths, bridleways, byways open to all traffic and restricted byways) within the county. Under the provisions of section 53 of the Wildlife and Countryside Act 1981, Devon County Council is legally required to keep its Definitive Map under continuous review and to make modifications where it appears that routes should be added, regraded or deleted. The Council achieves this by carrying out the review on a parish-by-parish basis across the county, to ensure that public rights of way in each parish are correctly recorded. To date 325 parishes (76%) have been reviewed. The map at Appendix I indicates the parishes completed (green), currently under review (pink and yellow), those that will be reviewed next (blue) and those still to be reviewed (white).

In addition to the county-wide Definitive Map Review there is a process whereby the public can make a formal application to the County Council to make a change to the Definitive Map. This process is set out under Schedule 14 of the Wildlife and Countryside Act 1981. Applicants have the right to ask the Secretary of State to direct a surveying authority to reach a decision on a Schedule 14 application if no decision has been reached within a specified timeframe. These are generally dealt with as part of the parish-by-parish process, although sometimes it is considered necessary to deal with them out of turn.

The Countryside and Rights of Way Act 2000 has placed a time limit on the legal recording of routes. If a route is not recorded, or is incorrectly recorded, on the cut-off date of 1 January 2026, then it will not be possible to modify the Definitive Map based purely on historical evidence.

Authorities are advised (Defra Circular 1/09) to have a Statement of Priorities which details how they intend to carry out the Review of the Definitive Map. Without a clear Statement of

Priorities, applications to the Secretary of State on the grounds of the authority's failure to determine an application within the specified timeframe are more likely, and they are also more likely to be upheld.

Devon County Council's Statement of Priorities is published in the Council's Rights of Way Improvement Plan (RoWIP) 2005 (reviewed in 2012) as Policies DM1A, DM1B/2, DM1C/2 and DM1D as detailed below at 2. In the event of an application to the Secretary of State for the non-determination of a Schedule 14 application the Secretary of State would take into account that the County Council has a programme in place for prioritising and dealing with such applications.

The County Council is also required to keep a register of Schedule 14 applications. There are currently 226 applications in the county awaiting determination. However, 160 (70%) of these are only partially made, as the applicant has not certified to the County Council that notice of making the application has been served on the landowner(s), as required by the Wildlife and Countryside Act 1981. The relevant Regulations require that applications are included on the register in relation to the date that they are received, independent of the receipt of certification. However, the obligation to determine the application within a specified timescale, and the right of the applicant to apply to the SoS for non-determination, does not start until receipt of certification.

As previously reported to the Committee on 20 November 2013 (Report HCW/13/65), a package of reforms to the public rights of way legislative framework is progressing through Parliament in the Deregulation Bill. The clauses relating to public rights of way contained in the Bill have, to-date, passed through both Houses without amendment. These reforms will significantly affect the procedures in relation to the determination and making of Definitive Map Modification Orders. The detail of specific regulations and guidelines relating to different parts of the Bill are important and will determine the clarity of processes and the impact on staff and resources. It is therefore anticipated that a review of the Definitive Map policies and procedures will be required once the full implications are known.

In the interim however, a review of the current Statement of Priorities is considered necessary to take account of reduced staff resources within the Definitive Map Team and to ensure that it is clear, robust and achievable.

2. Proposal

The current Definitive Map Review policies were first published in the RoWIP in 2005. A subsequent review of the RoWIP in 2012 did not make any substantive changes to the Definitive Map Review policies. Since then however the Definitive Map Review team has been reduced by two full-time posts, from 5.6 to 3.6 FTEs. This, and the increasingly complex nature of the work, has had an inevitable impact on workloads and progress of the Definitive Map Review programme. It is therefore proposed that two of the existing Definitive Map Review policies, which form the Statement of Priorities, are revised so as to make best use of limited staff resources, and that two remain unchanged.

2.1 *DM1A Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2015.*

With the reduction in staff resources and increasing workload it has not been possible to achieve this aim. It is therefore proposed that this policy statement be revised to:

DM1A/3 Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2020

so as to seek completion of the parish-by-parish Definitive Map Review before 1 January 2020, still six years ahead of the cut-off date for historical routes.

The Definitive Map Review Team is also exploring means of streamlining its procedures within the parameters of the legal process to further improve efficiency.

2.2 DM1B/2 *Schedule 14 applications and other such claims will be dealt with as part of the parish-by-parish Definitive Map Review. However, exceptions may be made for particularly contentious claims which are supported by a large amount of user evidence and where there is no nearby alternative route available, or where a route is likely to be affected by development, or where a route will result in significant road safety benefits. Negotiation with the landowner(s) to establish whether a quicker solution is available, for example, by express dedication, will be the first option.*

The County Council's policy of determining claims as part of the parish-by-parish review, rather than on an individual basis, has been established to deal with them as efficiently as possible. It is therefore proposed that this policy remain unchanged at this time.

In determining an application for non-determination of a schedule 14 application, the Secretary of State would take into account that the County Council has a programme in place for prioritising and dealing with such applications, and has taken this into account in the past.

The provisions of the Deregulation Bill will have significant implications for the Schedule 14 process in particular and this is one area where it is likely the County Council will need to review its procedures, once details of new processes have been clarified.

2.3 DM1C/2 *New claims which arise in a parish where the review has been completed will be deferred until the whole of that particular District has been reviewed. However, exceptions may be made in line with the criteria in policy DM1B/2 above. (2.2)*

With the intention to complete the parish-by-parish Definitive Map Review before 1 January 2020, to make best use of reduced staff resources it is proposed that this policy be amended to:

DM1C/3 *New claims which arise in a parish where the review has been completed will be deferred until the whole of the County has been reviewed. However, exceptions may be made in line with the criteria in policy DM1B/2 above.*

Three and a half full-time equivalent Definitive Map officers are now covering the eight District areas, including Exeter City. Deferring new claims, which arise in a parish where the review has been completed, until the whole County has been reviewed will allow staff resources to be more effectively deployed as each District area is completed and to prioritise completion of the review in the remaining parishes. Exceptions may still be made in line with existing criteria however.

2.4 DM1D *Any necessary legal event modification orders will be made and the several Definitive Maps and Statements will be consolidated to form a single Definitive Map and Statement for the whole county on completion of the parish-by-parish Definitive Map Review.*

It is proposed that this policy statement remain unchanged.

The Definitive Map and Statement consists of the published map and statement plus any orders that have been confirmed since publication, which have effected legal changes to the network, i.e. diversions, extinguishments and creations. In Devon there are also several

Definitive Maps and Statements as they were published on a District basis, with different relevant dates. Consolidation of the Definitive Map is the incorporation of all orders, spanning over 50 years, with the original map, into one up-to-date document and the production of one document merging all maps for the County.

All legal events since the publication of the original Definitive Map that have affected a right of way but have not modified the map will need compiling into an omnibus modification order(s).

Devon County Council currently has a digital 'working copy' of the Definitive Map incorporating any amending orders and, although not the published legal document, it is used for practical day-to-day purposes as the definitive map. It is intended that the consolidated Definitive Map will be published in digital form, in line with good practice guidance.

The production of a consolidated map following completion of the parish-by-parish Definitive Map Review is considered to be the most efficient policy. It is therefore proposed that the current policy remain unchanged at this time. It may need to be reviewed in the future to take account of new legislation. The Public Rights of Way Team may also consider a phased approach to Legal Event Modification Orders as the Definitive Map Review nears completion.

3. Financial Considerations

Financial implications are not a relevant consideration to be taken into account under the provision of the Wildlife and Countryside Act 1981. The Authority's costs associated with Modification Orders, including Schedule 14 appeals, the making of Orders and subsequent determinations, are met from the general public rights of way budget in fulfilling our statutory duties.

4. Legal Considerations

The implications/consequences of the recommendation(s) have been taken into account in the preparation of the report.

5. Risk Management Considerations

No risks have been identified.

6. Equality, Environmental Impact and Public Health Considerations

Equality, environmental impact or public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account.

7. Conclusion

It is recommended that Definitive Map Review Policy Statements DM1A and DM1C/2 be amended to:

DM1A/3 *Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2020; and*

DM1C/3 *New claims which arise in a parish where the review has been completed will be deferred until the whole of the County has been reviewed. However, exceptions may be made in line with the criteria in policy DM1B/2 above; and*

Policies DM1B/2 and DM1D to remain unchanged.

8. Reasons for Recommendations

To ensure that the County Council's Statement of Priorities for keeping the Definitive Map and Statement under continuous review is clear, robust and achievable.

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Electoral Divisions: All

Local Government Act 1972: List of Background Papers

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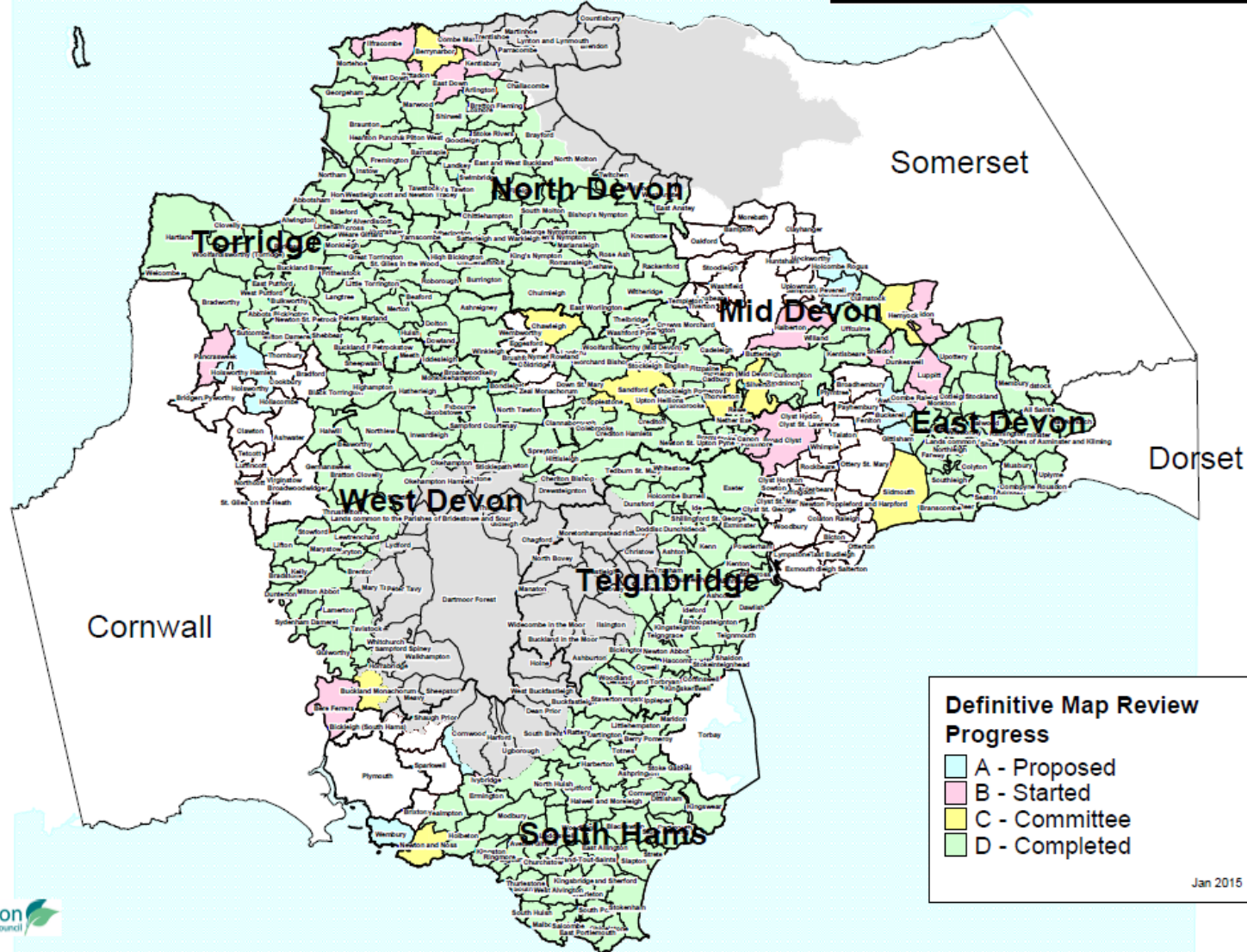
| Background Paper | Date | File Ref. |
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Nil

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Definitive Map Review Progress



Definitive Map Review Progress

- A - Proposed
- B - Started
- C - Committee
- D - Completed

Jan 2015