

Legal and Development
Review of the Definitive Map Statement of Priorities

Report of the Chief Officer for Highways, Infrastructure 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 Statement DM1A/3 be amended to:

DM1A/4 Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2025;

(b) that Policies DM1B/2, DM1C/3 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 357 parishes (83%) have been reviewed. The map at Appendix I indicates the parishes completed (green), those currently under review as either started or at Committee stage (pink and yellow), those that are proposed be started 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 time-frame and also a right of appeal against the Authority's decision not to make an order in respect of their application. These applications 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.

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) and Policy Statements revised and

approved 26 February 2015 by the Public Rights of Way Committee (minute ref *PR/37), as Policies DM1A/3, DM1B/2, DM1C/3 and DM1D 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 required to keep a register of Schedule 14 applications. There are currently 180 applications in the county awaiting determination. However, 144 (80%) of these are only partially compliant with the requirements of Schedule 14, as the applicant has not certified to the County Council that notice of making the application has been served on the landowner(s). The relevant Regulations require that applications are added to the register when they are received by the authority in the prescribed form and accompanied by a map and copies of evidence relied upon, independent of the receipt of certification. Certification is regarded as a separate and potentially subsequent event. However, the obligation to determine the application within the specified timescale (12 months), and the right of the applicant to apply to the SoS for non-determination, does not start until receipt of certification.

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. The cut-off date has not yet been implemented as it is linked to the implementation of other rights of way legislative reforms, which seek to mitigate some of its potential impacts, for example setting out certain saving provisions. The Secretary of State may also make regulations to extend the cut-off date beyond 2026, although this has not yet been proposed.

As previously reported to the Committee (20 November 2013 Report HCW/13/65, 8 July 2016 Report HCW/16/47 and verbal updates), new provisions have been introduced by the Deregulation Act 2015 which will affect the procedures in relation to the determination and making of Definitive Map Modification Orders. However, the necessary Regulations to implement these rights of way provisions have not yet been brought into force. The detail of specific regulations and guidelines relating to different parts of the Act 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 current workload and staff resources within the Definitive Map Team and to ensure that it is clear, robust and achievable.

2. Proposal

The County Council's Statement of Priorities for keeping the Definitive Map and Statement up-to-date is contained within the Rights of Way Improvement Plan (first published 2005 and revised in 2012) and updated Policy Statements approved by this Committee on 26 February 2015 (Report HCW/15/12).

Changes in staff resources, and the increasingly complex nature of the work, including an unprecedented number of Schedule 14 applications and casework from associated appeals, directions and order determinations, has had an inevitable impact on staff workload and progress of the Definitive Map Review programme. It is therefore proposed that one of the existing Definitive Map Review policies, which form the Statement of Priorities, is revised, but that others remain unchanged.

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

With the legacy of reduced staffing and increasing and complex workload it has not been possible to achieve this aim.

It is therefore proposed that this policy statement be revised to:

DM1A/4 Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2025

This revised completion date takes account of the existing rate of progress of the parish-by-parish Definitive Map Review, which exceeds our Annual Business Plan of completing the review in 8 parishes and/or Schedule 14 applications a year. It also still seeks completion ahead of the 2026 cut-off date for historical routes introduced by the CROW Act.

The Definitive Map Review Team is also continually 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. It is therefore essential that the Statement of Priorities, in particular, our timescale for completion of the parish-by-parish review, is reviewed periodically to ensure that it is practicable.

The provisions of the Deregulation Act 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/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.*

It is proposed that this policy remain unchanged at this time. Deferring new claims, which arise in a parish where the review has been completed, until the whole County has been reviewed allows staff resources to be most effectively deployed as each District area is completed and prioritises completion of the review in the remaining parishes waiting to be reviewed. Exceptions may still be made in line with existing criteria however, as above.

Following completion of the parish-by-parish review, priority would be given to those applications which are fully compliant with the requirements of Schedule 14, i.e. where the applicant has certified to the County Council that notice of making the application has been

served on the landowner(s) and, consequently, has a right of appeal against non-determination. Currently, only 36 applications on the County Council's register of applications are fully compliant. Of those applications, two will be determined next year, following directions, and six will be dealt with as part of the parish review process.

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 at this time, as previously discussed in Report HCW/15/12.

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 (including Climate Change) and Public Health Considerations

Equality, environmental impact (including climate change) and public health implications have, where appropriate under the provisions of the relevant legislation, been taken into account in the preparation of the report.

7. Conclusion

It is recommended that Definitive Map Review Policy Statement DM1A/3 be amended to:

DM1A/4 *Completion of the parish-by-parish Definitive Map Review will be sought before 1 January 2025.*

Policies DM1B/2, DM1C/3 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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None

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Definitive Map Review Progress

