



The Definitive Map and the 2026 Cut-off

The purpose of this information sheet is to explain what the Definitive Map is, how applications can be made to change it (based on evidence) and how it won't be possible to use historical evidence in support of an application to change the map after 2026.

1. What is the Definitive Map?

The Definitive Map is the legal record of all known public rights of way in the county. An accompanying document, the Definitive Statement, records the particulars of each path. The Definitive Map was compiled under the provisions of the 1949 National Parks and Access to the Countryside Act.

The Definitive Map is a living document that is subject to change as routes are added, deleted or changed in status or position. Where there is evidence that rights of way are missing from the Map or ways are shown as of the wrong status or in an incorrect position, then it is possible to make an application for a Definitive Map Modification Order (DMMO) which allows a legal change to be made to the Map. This process is explained in more detail below.

Different legal processes exist for landowners or developers to divert paths or to extinguish them, under s.119 of the 1980 Highways Act and under s.257 of the 1990 Town & Country Planning Act.

(a) **Different types of rights of way**

There are four different categories of path that are shown on the Definitive Map. These are:

Footpath - which carry a public right of way on foot only. There are around 2,840 miles of footpath in the county.

Bridleway - which carry a right of way on foot, to lead or ride a horse and to use a bicycle. There are 533 miles of bridleway in the county.

Restricted Byway - carry a public right of way on foot, to ride a horse and to use a non-mechanically propelled vehicle, for example a horse-drawn cart or a bicycle. Restricted Byways do not carry a public right to use motor vehicles. There are 132 miles of Restricted Byway in the county.

Byway Open to All Traffic (BOAT)- is a carriageway and thus carries a public right of way for all types of vehicular traffic including motor vehicles, but which have the character of a footpath or bridleway. There are only around 4 miles of BOATs in the county.

(b) **Legal effect of the Definitive Map**

The Definitive Map & Statement is legally conclusive as to what it shows, without prejudice to the existence of any other rights. This means that showing a way as a footpath means that it carries a minimum right on foot, but may also carry higher but unrecorded rights (s.56 of the 1981 Wildlife and Countryside Act)

2. Changing the Definitive Map

A legal process exists under s.53 of the 1981 Wildlife and Countryside Act whereby paths which have been used for many years or which carry certain historical rights, but are not shown on the Definitive Map (or not shown correctly) may be added to the Map.

It is also possible to delete paths or to downgrade them (for example, from bridleway to footpath); however, because of the legal effect of the Definitive Map, the test to remove paths or downgrade them is higher, and anyone alleging that a path shown on the Definitive Map isn't a right of way would have to show that a mistake was made in their recording under the 1949 Act.

(a) Duty to keep the map under review

The County Council has a legal duty to keep the map and statement under continuous review, which means that we are obliged to investigate any application provided it is properly made and that it is supported by evidence that a change should be made to the Definitive Map. The County Council has to maintain an online register of such applications (available at www.gloucestershire.gov.uk/prow), and has a duty in law to determine them and if necessary to make a legal change to the Definitive Map to show the unrecorded rights.

(b) Two types of evidence for a change in the Definitive Map

There are two types of evidence, either or both of which can be used in support of an application to change the Definitive Map: user evidence and documentary evidence.

(c) User Evidence

If a path is not shown on the Definitive Map but has been used for a long period (usually twenty years) 'as of right' (i.e. without force, secrecy or permission), then it is possible that a right of way has come into being through long user. The law also takes into account what steps the landowner has taken to either prevent such use, or to make it clear to path users that they did not intend that the path should become a public right of way.

Use of the way is recorded on individual "public path evidence forms" which are supplied by the Definitive Map Modification Order team at Gloucestershire County Council. These forms are each accompanied by a map which must be marked by the witness to show the position and extent of the path which they have used. These forms and maps should be submitted with the application. A separate information sheet gives more information on how to complete these forms.

Please note that it will still be possible to make an application based on user evidence after 2026.

(d) Documentary Evidence

This includes old maps, such as Inclosure Awards or Tithe Maps. A separate information sheet gives more details on the types of documentary evidence and their importance in determining historical status. After 2026 it will not be possible (subject to certain exceptions) to take into account pre-1949 evidence in support of an application.

Historical highway rights are not lost through disuse; they can only be extinguished by a legal order. This means that (as the law currently stands) it is possible to use old documents to show historical rights (footpath, bridleway or byway), even if the way may not have been used for many years. This will change after 2026 (see below).

(e) Relevant and Irrelevant Evidence

Modification Orders are not about whether it is a good thing or a bad thing that a path should be added or deleted, but about whether particular rights exist. The suitability of a claimed path for people likely to use it is irrelevant, as are any possible effects on the environment, security or privacy.

An application may be made for the addition or realignment of a right of way to the Definitive Map, or for the deletion of one from the Map. An applicant may also apply for a right of way to be shown differently [for example if they consider that a footpath should be shown as a bridleway] or for any other particulars on the Map and Statement to be amended

(f) How do I make a DMMO application?

Anyone may apply for a Modification Order. This includes groups of people such as the Ramblers' Association or a Parish Council. There is no charge for making a Modification Order application as, if successful, it is in effect a correction to the Definitive Map.

The applicant should apply to the Highway Records Team, Gloucestershire County Council, Shire Hall, Gloucester GL1 2TH [modificationorders@gloucestershire.gov.uk] in the first

instance for the relevant application forms. It would be helpful if you could advise the location of the proposed claim during this first contact. You will then be supplied with the relevant Forms 1, 2 and 3 to enable you to make your claim:

- “Form 1” [Form of Application for Modification Order] should be completed and returned to the county council.
- “Form 2” [Form of Notice of Application for Modification Order] should be completed and sent to every owner and occupier of any land to which the application relates. [Further copies of this form will be provided on request].
- When Form 2 has been sent, the applicant should complete “Form 3” [Form of Certificate of Service of Notice of Application] and return it to the county council together with Form 1.

If, after reasonable inquiry has been made (including Land Registry), the applicant is unable to trace the owner/occupier affected by the application, they may apply to the county council to dispense with a personal notice and serve notice instead by addressing it to the owner or occupier and affixing it to some conspicuous object on the land. The certificate that notice has been served is essential: without it the council is under no obligation to consider the application.

Please note that if you are referring to historical maps and documents to support your application, then it will be necessary to supply a copy of these documents. Your application will be invalid if you simply provide a list of the documents you are referring to. We will accept digital photo images of the documents on a CD but these must be clear and unambiguous.

The application must be accompanied by a map to a scale of not less than two and a half inches to one mile (1: 25,000) – larger if possible – which should clearly show the path or way concerned. We can supply a suitable map extract if desired.

(g) How are the applications decided?

The application will be given a priority scoring according to criteria set out in the County Council's Rights of Way Improvement Plan (ROWIP). They will be scored against a range of factors, including the quality of evidence and the public benefit of the right of way and given either a high, medium or low priority. Higher priority applications will then be considered ahead of lower priority applications irrespective of date of submission.

When an application is processed, the County Council must consult the relevant Parish and District Councils and investigate the evidence relevant to the application. A summary of any user evidence will be sent to the landowner[s] / occupier[s] affected by the application and an opportunity is given to them to comment on this evidence. Any comments are then sent to the applicant for their observations. In addition, the County Councillor for the area and any relevant user groups will be consulted on the application. Any documentary evidence discovered in the archives will also be taken into account.

The evidence as to whether rights exist or not is considered by County Council officers who prepare a report which is presented, with a recommendation, to either the Council's Commons and Rights of Way Committee or to an Internal Officer Panel. The Committee or Panel has to make a decision, on the balance of probabilities, as to whether a Modification Order should be made. This is called a determination.

If it is deemed that an Order should be made and published, copies are sent to the applicant, landowners / occupiers and other interested parties. Notices will be posted on site and a further notice placed in a local newspaper. A period of six weeks is allowed for any objections or representations to be made to the Order.

If objections are received, then the matter has to be passed to the Secretary of State for the Environment, who may either decide to determine the matter by holding a local Public Inquiry or via “written representation”.

If there are no objections or the objections are subsequently withdrawn, then the County Council will publish a further notice of confirmation, which will have the effect of legally changing the Definitive Map and Statement.

If the Rights of Way Committee or Internal Officer Panel decide not to make an Order, the applicant has twenty eight days in which to appeal to the Secretary of State who will consider the evidence and direct the Council accordingly.

As the County Council is required to decide whether to make an order or not for all applications within a set timescale, “undetermined” applications take priority over “determined” applications. This means that objections to low priority applications may take many years to resolve.

3. 2026 Deadline for Claims based on Historical Evidence

The 2000 Countryside and Rights of Way (CROW) Act introduced procedures which intended to provide certainty for landowners by putting a final closure date on applications based on historical (pre-1949) evidence.

As it was recognised that there are a large number of rights of way that are both unrecorded and under-recorded in terms of their status, these provisions were not legally commenced, and consideration was given as to whether the 2026 deadline should be imposed or not, or whether it should be subject to certain exceptions.

Following on from the recommendations of the advisory Stakeholder Working Group, it was decided to implement the 2026 closure date using the 2015 Deregulation Act, after which pre-1949 rights would be extinguished, but this extinguishment would be subject to exceptions.

The 2015 Deregulation Act, in addition to making substantial changes to the way that Definitive Map Modification Order applications are determined, confirmed that the 2026 cut-off will become law, subject to certain exceptions.

However, the provisions relating to rights of way within the 2015 Deregulation Act have not yet been commenced (i.e. brought into force). The exceptions to a blanket extinguishment of pre-1949 rights will be contained in the regulations which have not yet been published, and are expected to come out at the same time as the provisions are commenced. This has led to a certain amount of uncertainty.

It is expected but has not yet been confirmed that pre-1949 rights will be preserved over routes which are:

- (1) shown on the list of streets (road records);
- (2) which are still in regular use (it will be possible to use historical evidence of bridleway rights to support a claim based on long use by horse riders);
- (3) where an application for a Definitive Map Modification Order has been made by 1 January 2026 [the CROW Act wording would have extinguished rights that are not recorded by 2026]

As a consequence of the uncertainty surrounding 2026 and the commencement, it is felt that it is appropriate to continue as if the provisions will be enacted. As there are possibly hundreds of unrecorded and under-recorded rights of way in the county, it is expected that we will receive a large number of applications from individuals, user groups and local councils ahead of 2026 to record these historic rights before they are legally extinguished for ever.

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February 2021