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| **APPLICATION GUIDE**  **for Diversion or Extinguishment**  **of a Public Right of Way** |  |
| **Town and Country Planning Act 1990**  **Highways Act 1980** | |
| **The application form needs to be completed in full and must be accompanied by a plan of the proposal at a scale of at least 1:2500, preferably based upon an Ordnance Survey Map extract providing you comply with their Copyright conditions. The plan will need to show the entire length of the existing path(s) concerned in a solid line and the proposed new route(s) in bold dashed lines, together with the location of any stiles, gates, bridges, culverts or other works necessary to bring the new route into effect. The extent of landownership(s) will also need to be shown on the plan and relevant Land Registry documents enclosed with the application.** | |

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| ***Note:*** | ***These notes should be used when completing an application to divert or extinguish a Public Right of Way and mainly apply to Footpaths, Bridleways and Restricted Byways.***  ***These notes have been compiled on the basis of current legislation which of course could change at any time in the future.*** |

**INTRODUCTION**

The Highways Act 1980 gives Medway Council the power to make a Public Path Diversion Order if it can be shown that it is in the interests of the landowner or in the interests of the public. A Public Right of Way may be extinguished if it can be shown that it is no longer needed for public use or is unnecessary.

The Countryside and Rights of Way Act 2000 gave Medway Council new statutory powers to process path change Orders that meet new criteria relating to school security and the protection of Sites of Special Scientific Interest (SSSI's).

Applications which are considered not to satisfy the new criteria, but to fall within our general powers to process, may be dealt with under those powers instead in appropriate cases.

Public Path Diversion or Extinguishment Orders to enable development to take place are usually dealt with under the Town and Country Planning Act 1990. It is important to note that an Order cannot be made under this Act if the development has already been completed or is substantially complete.

Applications in respect of Byways Open to All Traffic follow different procedures than those for Footpath, Bridleways and Restricted Byways. Please contact the Public Rights of Way Dept for more information.

**1 *Relevant statutes under which a Public Right of Way may be diverted or extinguished***

**(a) Highways Act 1980 (General Powers)**

A Public Right of Way may be diverted if it can be shown that it is in the interest of the owner, lessee or occupier of the land concerned or indeed if it is in the interest of the public.

Any person can request an Order to be made, however the landowner’s consent should be sought and it is for the Council to consider whether to make the Order or not.

After an Order is made, it may be confirmed. The statutory test for confirmation can be summarised as follows:

1. The diversion must be expedient in the interest of the owner, lessee or occupier of the land and/or in the interests of the public
2. Neither terminus of the path can be diverted except to a point on the same (or a connected) highway, which is substantially as convenient to the public.
3. The Secretary of State/Medway Council is satisfied that the path/way will not be substantially less convenient to the public as a result of the diversion.
4. The effect the diversion would have on the public enjoyment of the path as a whole must be considered
5. The effects on the other land served by the existing path and the land upon which the new path would run must also be taken into account.

To ensure that an Order will be capable of being confirmed in due course, the Council will have regard to those statutory tests in deciding whether or not to make it.

A Public Right of Way may be extinguished if it can be shown that it is no longer needed for public use or is unnecessary**. *It is no easy matter to prove either of these statements.***

Applicants should note that the above is only a brief summary and is not intended to be a complete account of relevant legislation.

**(b) Special Diversion Orders under the Highways Act 1980**

1. Sites of Special Scientific Interest (SSSIs) - The appropriate conservation body may make a request in respect of SSSIs. An application may be considered where use by the public is likely to cause damage to the SSSI.
2. Schools - The proprietor of a school may make a request for a diversion or extinguishment. Where a route crosses school property, an application may be considered where it can be shown that it is expedient to divert or extinguish the Right of Way to protect staff and pupils from violence or harassment.
3. **Town and Country Planning Act 1990**

In respect of Town and Country Planning Act applications, Orders can only proceed if they are related to a specific planning consent.

The above Act provides that a diversion or extinguishment of a Public Right of Way may be pursued when necessary to allow development to take place for which planning permission has been obtained. Such Orders have **to be promoted by the Council authority that gave the planning consent.** An Order under this Act may provide for a creation of an alternative highway in replacement for the Public Right of Way that is to be either stopped up or diverted. In addition, an existing highway may be improved for public use in lieu of the path affected by the application. An alternative path, unlike a diversion under the Highways Act 1980, does not have to have a terminus on the original path.

**2 *Summary of Medway Council's Public Rights of Way Network Change Policy***

Medway Council will take into account whether the following criteria are satisfied before promoting a Public Path Change Order. Irrespective of the following, the statutory reasons (as set out in section 1 of this document) for changing Public Rights of Way must apply.

1. The status of the route must not be in dispute at the time of the application, unless the Public Path Order is being implemented concurrently with an application under Section 53 of the Wildlife and Countryside Act 1981.
2. The applicant must agree to meet the Council's costs of promoting the Order and bringing the new path into a fit condition for public use (See section 3).
3. The applicant must also agree to defray any compensation which may become payable as a result of the proposal.
4. The definitive line should where it is considered by Medway Council to be reasonably practicable be open, clear and safe to use.

***However nothing in this policy is intended to prevent the Council promoting a Public Path Change Order in any case where it considers it appropriate in all the circumstances to do so.***

**3 *What costs are involved in processing the proposal?***

As a diversion or extinguishment is generally to the benefit of an applicant, Medway Council will expect that applicant to meet the full costs of promoting the change.

(a) The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993, as amended in July 1996, allow the Order Making Authority to charge the full costs of processing Orders.

(b) Applicants will be charged the full administrative costs for the making of an Order plus a further proportional cost relating to any additional connected paths included in the Order. In addition, applicants will be charged the actual cost of advertising the proposal in the press on the occasions of the making and then the confirmation of the Order. Such advertising costs are not within the control of Medway Council, although we will endeavour to keep such costs to a minimum wherever possible.

(c) If there are any 'works' required to bring the new path into a fit condition for use the applicant will be required to pay for them (i.e. installation of bridges, stiles, etc). Medway Council would normally expect applicants to do the works themselves or arrange for such works to be done. The works must be completed to the satisfaction of the council. Alternatively, if you would prefer MEDWAY COUNCIL to carry out the works, costs will be estimated to you. Details may be discussed with the relevant Area Rights of Way Officer, together with estimated costs of any necessary fingerposts or waymarking and all other works.

**PUBLIC PATH ORDERS - COST SCHEDULE**

**PRE-PUBLICATION STAGE**

Preliminary costs incurred at this stage are non-refundable. The applicant will be charged pre-publication costs even if having sent the proposal to consultation, Medway Council decides not to make an Order.

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| **ITEM** | **DETAILS** | **WHAT'S INCLUDED** | **COST** |
| 1. Process Application | Assess feasibility, check application form, set up file, enter details onto schedule  Land Registry Search (if no such documentation supplied) | Officer time, computer work, stationery, photocopying  Officer time  Land registry charges | £59.50  £23.80 + actual costs of title searches |
| 2. Site visit | Site familiarisation, assessment of technical and legal works required, discuss procedure with applicant | Officer time,  Mileage | £178.20 |
| 3. Plan preparation | Prepare one GIS plan, send to applicant for confirmation | Officer time,  Computer work | £83.20 |
| 4. Initial consultation | Send consultation letter to user groups, local councils and statutory undertakers | Officer time,  Computer work,  Stationery | £118.80 |
| 5. Responding to consultation replies | Responding to queries and seeking to overcome objections (possibly by a site meeting)  Additional site meetings as required | Officer time,  Administration etc  Stationery | £297.20  £178.20 per visit |
| 6. Preparation of Authority or Committee report | Draft report including plans and prepare accompanying documentation. Present to Committee (if required) | Officer time,  Computer work,  Stationery,  Photocopying | £261.40 |

**ORDER MAKING STAGE**

If Medway Council decides to make an Order, the applicant will be invoiced for both the pre-publication stage and the Order making stage. The Order will only be made on receipt of payment. Please note that the actual cost of advertisement for the Order making stage will be invoiced at a later date.

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| **ITEM** | **DETAILS** | **WHAT'S INCLUDED** | **COST** |
| 7. Prepare Order, notice and statement. | Draft Order, notice and statement. Sign and seal Order. | Officer time,  Computer work,  Stationery  Legal costs for signing / sealing of order | £202.30 |
| 8. Distribution of Order | Sending copies to prescribed organisations and consultees | Officer time, stationery, postage (incl. recorded delivery), photocopying | £142.70 |
| 9. Posting notices on site | Post, check and remove notices | Officer time, mileage,  Stationery, wooden posts | £130.90 |
| 10. Advertise notice of making of Order | Booking advertising space, Sending notice to newspaper and checking advertisement | Officer time | £41.60 + actual cost of advertisement |
| 11. Responding to replies | Responding to queries and seeking to overcome objections.  Additional site meeting (as required) | Officer time,  Computer work, stationery | £118.80  £178.20 per visit |
| 12. Forward to DEFRA (if required) | Prepare submission and relevant documentation to send to Secretary of State | Officer time, photocopying, computer work | £618.10 (if required due to objections not being resolved) |

# CONFIRMATION OF ORDER

On confirmation of the Order, the applicant will be charged the costs of confirming the Order as well as the advertising costs of both newspaper adverts. If the Order is sent to the Secretary of State for decision, the applicant will be charged the cost of forwarding the Order to DEFRA (see stage 12 above) and the advertising cost of the initial newspaper advert. The applicant will also be invoiced for the Legal Event Order, which has to be made in consequence of a confirmed Change Order to formally modify the Definitive Map.

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| **ITEM** | **DETAILS** | **WHAT'S INCLUDED** | **COST** |
| 13. Prepare confirmation notice | Sign confirmed Order, draft confirmation notice | Officer time,  Stationery, computer work | £59.50 |
| 14. Distribution of confirmed Order | Sending copies to prescribed organisations and consultees | Officer time, stationery, postage (incl. recorded delivery), photocopying | £142.70 |
| 15. Post notices | Prepare, post, check and remove notices | Officer time, mileage,  Stationery,  Wooden posts | £130.90 |
| 16. Advertise notice of confirmation of Order | Booking advertising space, Sending notice to newspaper and checking advertisement | Officer time | £41.60 + actual cost of advertisement |
| 17. Produce LEO, amend Definitive Map, distribute LEO and inform Ordnance Survey | Sign and seal LEO. Send copies to prescribed organisations. Amend Definitive Map and Statement. | Officer time,  computer work, stationery,  postage,  photocopying | £142.70 |

**ADDITIONAL CHARGES**

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| 18. Additional letters | Letters to applicant and objectors etc. not covered by above items | Officer time | £35.80 each |
| 19. Additional site visits | Site visits to check plans, meet objectors etc. not covered by above items | Officer time, mileage | £178.20 each |

**CERTIFICATION / BRINGING INTO FORCE (if required)**

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| 20. Site Visit | To check works carried out have met agreed standard | Officer time, mileage | £178.20 |
| 21. Certificate Preparation | Draft Certificate | Officer time, stationery, | £59.50 |
| 2. Advertise Certificate | Booking advertising space, Sending notice to newspaper and checking advertisement | Officer time | £41.60 + actual cost of advertisement |
| 23. Distribution of certificate | Sending copies to prescribed organisations and consultees | Officer time, | £118.80 |

**NOTES**

* In addition to the above costs the applicant will also be liable for the costs of the two advertisements in the relevant local newspaper. The cost of these adverts will depend on the newspaper used and the size of the advert, but as at June 2021 the average cost of each advert was approximately £275.
* If more than one plan is required for one Order then the cost of preparing the plan (stage 3) will be multiplied accordingly.
* Should Medway Council not make an Order or not complete the Order making process, or the applicant withdraws the application, the applicant will be charged costs incurred up to the date of the Council’s decision not to proceed or such withdrawal.
* The minimum cost of an unopposed Order would be **£2550.20** plus advertising costs.
* If additional site visits and letters are required then these will be charged as stated above.
* If certification / bringing into force is required a further cost of £398.10 + advertising costs will be incurred.

**4 *Payment of fees***

The applicant will receive up to four invoices during the whole process. The first invoice will include the administrative costs of the pre-publication stage and, if applicable, the Order-making stage. If MEDWAY COUNCIL confirms the Order itself, the second invoice will include the administrative costs of confirming the Order and the actual costs of advertising the Order at both the Order making stage and the confirmation stage. The invoice will also cover the making of the required Legal Event Order. If there is no objection but Medway Council decides against confirming the Order, or there are objections and Medway Council decides not to forward the matter to the Secretary of State, the second invoice will include costs of advertising and making the Order.

Should the case have to be decided at a Public Inquiry, the applicant will be invoiced for the cost of forwarding the case to DEFRA (stage 12) and for the advertisement of the making of the Public Path Order prior to the Public Inquiry. If the Order is confirmed following the Public Inquiry, the applicant will then be sent a third and final invoice for the advertisement of the notice of confirmation of Public Path Order and the making of the Legal Event Order.

Construction of new routes e.g as part of a diversion, have to be certified by Medway Council to confirm the path has been constructed to a satisfactory standard. Where this is the case the applicant will be sent a fourth invoice once the certification has been issued. This will include the costs of the site visit to check works and the issuing and advertising of the certificate.

**5 *Application***

The application form must be completed in full and accompanied by a plan of the proposal at a scale of at least 1:2500 and documents proving land ownership e.g. land registry searches. It must then be sent to Medway Council at the address provided in section 9 of this document.

**6 *What happens once my application has been submitted?***

There are a number of steps and procedures that have to be followed in dealing with your application.

**(a) *Check application details.***

Following receipt of your application, it will be entered onto the Public Path Change Order Schedule. Applications are normally dealt with in order of receipt and will be processed in accordance with the relevant legislation. We will check all aspects of the application form and supporting documents. Dependent upon the backlog of work at any one time and the complexity of your proposal it may be many months before work can begin on your application.

**(b) *Consultation***

Unless you have stated on the application that you wish to undertake the preliminary administration work yourself then MEDWAY COUNCIL will consult representatives of user groups and relevant District and Parish Councils together with the Statutory Undertakers who may have apparatus over or under the ground affected by your proposal. They are all informed of your proposal and are invited to comment; some will wish to view the proposal. Normally a period of twenty-eight days is allowed for the receipt of their comments.

**(c) *Resolve adverse comments***

If there are adverse comments at this stage we may endeavour to resolve them with your assistance. If, at this stage, adverse comments cannot be resolved Medway Council will either take account of those objections but still continue to process the application or, as a consequence of them, may decide not to continue with your application in which case you will be advised and invoiced accordingly.

**(d) *Authority for Order***

Normally authority for an Order is sought from delegated powers of the relevant Chief Officer. Where Medway Council considers there is a substantive objection against a proposal, authority will be sought from the relevant Committee of Elected Members. If authority is given then the Order will be made and advertised in the local newspaper.

**(e) *Make and advertise Order***

The Order will be made and advertised in the local press. The Council will notify those bodies previously consulted together with any other interested individuals and prescribed organisations. The formal objection stage commences on the day the press advertisement appears and expires 28 days later. During this period notices are also displayed prominently on the site.

**(f) *Resolve formal objections***

If there are objections to the Order and they cannot be resolved, it could lead to the proposal either being withdrawn or being referred to the Secretary of State for the Environment, Food and Rural Affairs for decision.

**(g) *Unresolved formal objections***

If Medway Council decides to support a proposal irrespective of sustained objection, it will be referred to the Secretary of State for decision as referred to above. At this point you will also be invoiced for the work already carried out.

The Secretary of State may either deal with the matter by way of written representation or appoint an Inspector who will hear the evidence at a Public Inquiry, which affords the chance for any interested parties to state their case. The Inspector decides on the basis of the evidence put to him whether, or not, the proposal should be confirmed. He/she can also modify the details of the proposal when confirming an Order. The Inspector will not make his/her decision at the Public Inquiry. He/she will consider all of the evidence put before him/her and eventually inform the Council and other interested parties of his/her decision. This could take several months.

1. ***Confirm Order***

If there were no objections at the advertising stage, or following resolution of objections, Medway Council may confirm the Order and arrange for it to be advertised as required. The Council will then send you a final invoice for the administrative costs of confirming the Order and the cost of all advertising. If the case is taken to Public Inquiry, you will be invoiced prior to the Public Inquiry for the administrative costs incurred in preparing and sending the submission to DEFRA as well as the cost of advertising the Order at the Order making stage.

The Definitive Map and Statement of Public Rights of Way will then be amended to show the change. Within the Confirmation Notice there is provision for anyone to appeal to the High Court within six weeks if they are aggrieved with the way in which the Council has dealt with the matter.

**7. *Flow Chart showing the procedure for progressing Public Path Change Orders***

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| APPLICATION RECEIVED, ACKNOWLEDGED AND ENTERED ONTO SCHEDULE |

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| APPLICATION DOCUMENTS CHECKED, SITE VISITED WITH OFFICER AND APPLICANT IF APPROPRIATE TO DETERMINE WORKS REQUIRED ETC, CONDITION OF EXISTING PATH AND TO CHECK THAT ALL STATUTORY REQUIREMENTS ARE MET |

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| DECISION MADE BY MEDWAY COUNCIL AS TO WHETHER APPLICATION SHOULD BE TAKEN FORWARD | | | |
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| IF APPLICATION IS NOT TO BE TAKEN FORWARD THE APPLICANT IS ADVISED ACCORDINGLY |  | IF APPLICATION IS TO BE TAKEN FORWARD, STATUTORY PROCEDURES WILL BE COMMENCED |

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| WORK STARTS WITH INITIAL CONSULTATION EXERCISE USING PLAN PROVIDED BY THE APPLICANT OR ONE PREPARED BY MEDWAY COUNCIL.  EFFORTS WILL BE MADE TO RESOLVE ANY PROBLEMS AT THIS STAGE | | | |
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| IF PROBLEMS CANNOT BE RESOLVED AT THIS STAGE THE APPLICANT IS ADVISED AND INVOICED ACCORDINGLY | |  | | REPORT TO DELEGATED OFFICER OR COMMITTEE RECOMMENDING THAT AN ORDER BE MADE. | | |
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| IF RECOMMENDATION IS NOT ENDORSED THE APPLICANT IS ADVISED AND INVOICED ACCORDINGLY |  | IF RECOMMENDATION IS ENDORSED THE CHANGE ORDER IS THEN MADE AND PUBLICISED, NOTICES SERVED AND POSTED ON SITE |

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| 28 DAY OBJECTION PERIOD | |
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| IF FORMAL OBJECTIONS ARE DULY MADE THE ORDER MAY BE SUBMITTED TO THE SECRETARY OF STATE | | | | | | |  | IF NO FORMAL OBJECTIONS ARE RECEIVED THE ORDER MAY BE CONFIRMED, NOTICE OF WHICH IS SUBJECT TO SAME PUBLICITY AS BEFORE | | | 🡸 |
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| LOCAL INQUIRY | | | | | | |  | AMEND THE MAP AND STATEMENT BY LEGAL EVENT ORDER, CIRCULATE COPIES TO RELEVANT MAP SHEET HOLDERS, NOTIFY ORDNANCE SURVEY AND ARCHIVE FILE | | |  |
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|  | |  | | | | |  | FINAL ADJUSTMENT OF COSTS TO APPLICANT | | |  |
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| NON CONFIRMATION BY INSPECTOR | | |  | CONFIRMATION BY INSPECTOR | | | | | |  | |
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**8 *How long will it take?***

Medway Council will endeavour to process applications as soon as reasonably practical and as resources and other priorities allow.

Normally, for an unopposed Order, an estimated timeframe of one year is reasonable. However, if an opposed Order is sent to the Secretary of State for determination, it may be many months before a decision is reached.

On the commencement of paragraphs 7 & 10 of schedule 6 of the Countryside and Rights of Way Act 2000, Medway Council will endeavour to determine applications lodged by the owner, lessee or occupier of any land used for agriculture, forestry or the breeding or keeping of horses within the timescale envisaged by the new sections 118ZA & 119ZA of the Highways Act 1980. That is 4 months from the date of receipt of application. The applicant may of course exercise his right to seek a direction from the Secretary of State if the Council fails to comply with this timeframe.

## 9 How to proceed with your application

Please read through these Notes carefully and look at the requirements within the application form. Please send the application form and plan to:

**Public Rights of Way**

**Regeneration, Culture, Environment and Transformation**

**Medway Council**

**Gun Wharf**

**Dock Road, Chatham**

**Kent**

**ME4 4TR**

Your application will be acknowledged on receipt.

## 10 Extra Information regarding Diversion of Public Paths

**Widths**

Medway Council specifies the following minimum widths for a diverted footpath or bridleway:

**Unenclosed Headland Enclosed**

Footpath 1.2 metres 1.8 metres 2.0 metres

Bridleway 3.0 metres 3.0 metres 4.0 metres

Where barbed wire is necessary to enclose a path it must be secured on the outside of the fence posts with plain wire strand for strand on the path side of the posts taut enough to prevent users of the path from coming into contact with the barbs (see *s.164 of the Highways Act 1980*).

**Diversion of cross-field paths**

Where possible a diverted path should be routed so as to avoid the need to plough it or otherwise disturb the surface.

Please note that the Highways Act prohibits the ploughing or other disturbance of a footpath or bridleway that follows the side or headland of a field or enclosure.

**Preliminary consultations**

Please note that it is in your interests to consult your parish council, your neighbours and relevant user groups such as the Ramblers’ Association and/or the British Horse Society before you make an application. Whilst their opinions are not in any way conclusive, they will be taken into account by the rights of way department when they consider your application. It may save you money if you are able to resolve any potential opposition at this stage.