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Department
for Environment
Food & Rural Affairs

Improvements to the policy and legal framework for public rights of way; a public consultation

Summary of responses

July 2013

This document/publication is also available on our website at:

https://www.gov.uk/government/consultations/improvements-to-the-policy-and-legal-framework-for-public-rights-of-way

Any enquiries regarding this document/publication should be sent to us at:

Rights of Way Team
1/09 Temple Quay House
2 Temple Quay
Bristol

BS1 6PN

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Introduction

Rights of way are public highways that exist for the benefit of the community at large, in much the same way as the public road network. But, apart from byways open to all traffic, they generally only have rights for the public to use them on foot, horseback or bicycle or other non-motorised vehicles, depending on their status.

England's network of public rights of way is a part of the nation's heritage, and typically provides ways for people to enjoy and pass through areas of green space and the countryside around where they live or which they visit. It also fulfils an important role in more urban areas. It is a mix of ancient routes (including those historically created as part of the process of "inclosing" common lands into private occupation) and those created more recently, through long public use, under statutory powers, through dedication by the landowner, or alongside development.

To ensure that historic and more recent routes were properly recorded, the 1949 National Parks & Access to the Countryside Act placed a duty on local authorities to create and maintain a legal record of all public rights of way (except for those that were part of the 'ordinary roads' network) – known as "the definitive map and statement of public rights of way".

It was originally expected that this process would be completed within five years or so, but although much work has been done, completion of the legal record has remained a significant challenge, despite several subsequent attempts to improve the legislative framework.

To resolve this, the Countryside and Rights of Way Act 2000 introduced a cut-off date, whereby after 25 years (i.e. in 2026) all rights of way already in existence in 1949 and not recorded on the definitive map and statement by 2026 would be extinguished, subject to the exceptions already provided for in the Act. The intention was to:

- remove uncertainty for landowners, who might otherwise have a 'lost' right of way discovered on their land at any point in the future;
- provide an incentive to complete the definitive map and statement before the 2026 deadline.

However, subsequently it became clear that completion by 2026 would not be possible unless a streamlined approach to recording public rights of way was adopted. In order to develop such an approach Natural England established an independently-chaired Stakeholder Working Group to develop a consensus among stakeholders, representing landowners, rights of way users and local authorities, about the best way forward.

In March 2010 the Stakeholder Working Group published a report, entitled 'Stepping Forward' containing a package of 32 proposals aiming at improving the processes for identifying and recording historical public rights of way.

In May 2012, the Government launched a public consultation on "Improvements to the policy and legal framework for public rights of way". This set out how the Government proposed to respond to the Stakeholder Working Group's report, but also set out proposals for a wider package of improvements in three key areas:

- Considering whether improvements should be applied to procedures creating rights of way and for diverting or extinguishing them.

- Looking at how it could be made easier for landowners to progress proposals for the diversion or extinguishment of rights of way affecting their land (subject to the current public interest tests); and

- addressing barriers to growth which result from non-planning consents, as highlighted in the 2010 Penfold Review.

The consultation closed on 6th August 2012, and this document summarises the responses received. It does not replicate the context and full background to the consultation questions, so it may help to read this document alongside the original consultation document and the Stakeholder Working Group's report "Stepping Forward" which can be found on the consultation web page.

Part 5 of the consultation sought additional information on the likely impact of the proposals. Although one or two national non-governmental or professional organisations have some data, and some local authorities and user groups have made estimates on the basis of their local experience, we anticipated some difficulty in getting this information though the consultation. Therefore in September 2012 we commissioned a research study to gather further evidence on Parts 2, 3 and 4 of the consultation and to draw into this any consultation responses to Part 5. We do not provide an analysis of the responses to Part 5 here, but have posted the research report separately on the Defra website on the consultation web page.

This summary is also available on the consultation web page.

Overview of the responses

Breakdown of the responses

We received a total of 323 responses to the consultation, along with a handful of related queries which were not responses in themselves. A list of respondents is in the appendix to this summary.

A breakdown of responses by category is as follows:

County, unitary authority	48
District, borough authority	22
National Park Authority	8
Town or Parish Council	35
National NGO	20
Local user group	46
Local multi-stakeholder group (including Local or Countryside Access Forum)	38
Professional organisation or association	9
Business	8
Individual	83
National Government department or agency	2
Other	4
Total	**323**

This represents a good rate of response overall from a broad range of organisations and individuals. National NGOs covered a range of sectors. Local user group responses were dominated by responses from horse riding and motor vehicle groups, though there were also a number of multi-user groups, footpath groups and carriage driving groups. There was a very good response rate from multi-stakeholder groups (groups representing both user and landowner/occupier interests) in particular from Local Access Forums and the Countryside Access Forums. Professional organisations comprised mainly rights of way and legal professionals, although two local councils' organisations are included here.

Businesses were less well represented, and these responses came from a wide range of sectors from utilities to land management and housing. However land owning and land management views were also represented by several of the national non-governmental organisations, and many of the individual responses came from smaller landowners/occupiers - including householders and farmers. Individual responses made up just over 25% of the total, and represented a wide range of views from both the rights of way user and land owner/occupier perspective – many of them being examples of both.

98 of the respondents gave overall responses rather than responses to the specific questions in the consultation, while the remaining 225 respondents used the pro forma (or

some version of it). The individual questions in the body of the consultation document (1-29) received an average response rate (from those who used the pro-forma) of about 82%.

Overall the quality of responses from all sectors, including from individuals, has been high. Local issues concerning public rights of way can be complex, involve conflicting interests and be extremely difficult to resolve. Understandably a very wide range of views are represented, and often these views are very strong.

Overall summary of the responses and main messages

Most respondents supported the Stakeholder Working Group proposals as a whole. There was also broad acceptance of the Group's basic tenet that the proposals needed to be implemented as a package, because of the importance of maintaining consensus reached between access, environmental, land owner and local authority representatives.

There was some feeling that the opportunity to make more radical changes had been missed, but also recognition that it was not an easy task to produce a series of proposals that could gain agreement from all parties.

A minority of respondents criticised the Stakeholder Working Group process as being unrepresentative and some expressed concern that there had been no opportunity for the wider rights of way stakeholder community to evaluate the Stakeholder Working Group proposals before they were published.

There was strong support for national guidance for local authorities, applicants and landowners and backing for more flexibility for informal consultation and negotiated settlements in advance of formal legal proceeding and for improving the relationship between the parties involved in rights of way procedures. A strong message from respondents was the need to avoid introducing extra bureaucracy, with the associated costs. There were concerns that where any new any legal criteria were introduced, they need to be clearly defined and that the processes should be transparent.

There was strong support across all sectors for a higher burden of proof for definitive map modification order applications.

The scope of the consultation

Some individuals and interest groups expressed disappointment that the scope of the reform proposals did not extend wider. Suggested examples of what respondents thought should have been included were:

- a third party appeal where an authority refused to make a traffic regulation order,
- making all public rights of way open to all users (except those in motor vehicles),
- greater formal involvement of Local Access Forums in rights of way procedures,
- greater consideration of factors such as privacy, security, necessity, public safety, heritage and ecology in rights of way decisions.

Some respondents felt that in some of the reform proposals there was not enough detail to enable meaningful comment.

There were some suggestions that the economic contribution that a well-maintained and promoted rights of way network could offer to a community were underplayed. Others thought that not enough consideration had been given to the part the volunteers play in the process.

2026 cut off and Local Authority resources

Stakeholder opinion about the cut-off itself and whether it should or could be implemented differed widely. Many responses suggested it was not feasible given the scale of the task and resources available in local authorities. A few suggested it would be a betrayal of the public interest if potentially useful routes were to be lost through the cut-off and that implementation needs to be kept under review.

Some argued that not implementing the 2026 cut off date would have the benefit of avoiding the introduction of a whole set of further legal complications. Although, because of the lack of progress in completing the historical record of public rights of way, many respondents are opposed to idea of a cut-off, many others want the cut-off to be as certain and as soon as possible.

Several respondents highlighted the stress and expense incurred with the current confrontational system, especially through spurious or insubstantial applications to record public rights of way and suggested that the cut-off date for ways not currently in use should be brought forward.

Concern was expressed that, rather than bringing clarity and certainty, the 2026 cut-off date will result in a long period of uncertainty whilst individual cases are resolved through legal processes.

The consultation process and documents

There was some feeling that this was quite a difficult consultation as it relied on so many documents and was complex and not always clear or easy to follow.

Some respondents experienced problems with the format of the consultation documents, in particular the response pro-forma.

Part 1 - Recommendations of the Natural England Stakeholder Working Group on unrecorded rights of way.

Question 1. Do you agree that there should be a brief, post cut-off period during which applications that pass the basic evidential test can be registered?

Total responses	204
Yes	146
No	34
Other substantive response	24

A large majority of respondents were in favour of this proposal, saying that it would enable authorities to evaluate and respond to the effect of the reformed processes and yet still deal with remaining applications and new applications as the deadline approaches. A number of surveying authorities (i.e. those responsible for recording rights of way) suggested six months or more. Some respondents suggested looking at the periods used by the Countryside and Rights of Way Act 2000 or the Natural Environment and Rural Communities Act 2006.

Those against the proposal commented that there should be no period for registering applications after the cut-off date because it would undermine the certainty of the cut-off date and cause confusion. Some added that it could also be difficult to manage in terms of both work load and public perception. A few suggested bringing the cut-off date forward to bring certainty to landowners and managers and to encourage local authorities to act.

Additional points made included the following.

- It was suggested that surveying authorities should have sufficient time, however long that might be, to register applications that pass the 'basic evidential test'. Applications should not be put at risk because a surveying authority does not allocate sufficient resources to the process. One suggestion was that authorities could determine their own cut-off target with advice from the Local Access Forum.

- There should be a provision enabling an applicant, whose application has not been registered during such a post cut off period, to appeal against that non registration. Newly registered applications should not take precedence.

- It would need to be clear how applicants would be given a "reasonable opportunity" to address deficiencies in their application – including how long after initial application the resubmission can be made. Some suggested that the cut-off should apply to the date the application is received by the authority rather than the date it appears on the register of applications.

- Included with routes identified by the authority, there should be a register of unrecorded routes/anomalies etc that will exempt them from the cut-off date.

Question 2. Do you agree that during this period, local authorities should be able to register rights of way by self application, including any self applications made in the past, subject to the same tests and transparency as for any other applications?

Total responses	200
Yes	163
No	21
Other substantive response	16

A large majority were in favour of this proposal. There was some uncertainty – even from surveying authorities – about whether they already have the power to do this. However many recognised that authorities will need this power to resolve anomalies and to ensure the recording of rights of way of which the authority is aware but for which there has been no independent application. This would help to protect the public interest.

Several felt a system of registration (of the intention to apply) would be the least burdensome. This could also bring transparency to the list of anomalies.

Those who were against the proposal felt that local authorities should not have an extra period beyond that available to other applicants and that the proposal would undermine the cut-off and add confusion.

Many suggested that the success of this proposal would be dependent on sufficient resources and prioritisation being given by authorities – there was some scepticism that this would happen. Monitoring, for example by the Local Access Forum, was suggested by some. There was also a suggestion that Local Access Forums should be able to make applications and that others such as parish councils and local research groups could be used to make applications (if funding were available).

Other points made included the following.

- It was suggested that post cut-off registering of anomalies and other potential changes to the record, which the local authority consider necessary shouldn't require an application. There could be an exception to cover this point and avoid the burden of local authorities having to research their records.

- One suggestion was that local authorities should be given incentives to complete local street gazetteers, if such routes are to be exempted from the cut-off.

- An alternative would be to minimise the number of modification orders and instead use public path orders to create routes that are of value to the public.

- Local authorities can be vulnerable to political pressure from certain interests, for example elected members seeking to influence quasi judicial decisions. Local authority officials may be lobbied to make self-applications, increasing the burden. There needs to be transparency about the process, provision to avoid conflicts of interest, and an appeal mechanism.

Question 3. Are there any other categories of rights of way that need to be protected by exceptions (to the 2026 cut-off) set out in regulations?

Total responses	195
Yes	121
No	37
Other substantive response	37

The categories set out in the consultation document

Rights over routes that are subject to application recorded on the Register maintained by local authorities under section 53B of the Wildlife and Countryside Act 1981

Several respondents highlighted the apparent paradox in the current legislation whereby an application to record a public right of way could be negated by evidence from an objector that the right of way had existed in 1949.

Routes identified on the list of streets/local streets gazetteer as publicly maintainable or as private streets carrying public rights

Many respondents commented that often such highways are not recorded either on the definitive map and statement or the list of streets and local streets gazetteer and where these carry public rights of way it would still be important to protect them from the cut-off. Many footpaths and bridleways terminate on such highways, which need to be recorded or the path terminating on them will become a cul-de-sac. Some respondents said that the list of streets and or local streets gazetteer can be unreliable and of uncertain status, because there is no defined process for adding or removing routes from them. The protection afforded to rights of way by such an exemption would therefore also be uncertain.

It was suggested that other records showing that highways were public maintainable should be added to this category, such as the 1929 Local Government Act handover maps.

There were a number of respondents who argued that the list of streets and local street gazetteer needed consolidation and a similar legal status to the definitive map and statement.

There was some concern that the exceptions themselves would create significant work and ongoing dispute, well beyond the cut-off date. For example: unsealed routes on the list of streets that are not shown on the definitive map and statement by the cut-off date would rely on user evidence, perpetuating uncertainty about the rights that exist.

Rights of way for which evidence can be produced to show that they were in regular, continuous use at the time of the cut-off.

Some respondents felt there was a risk that pre-1949 routes that are in use in 2025 could be obstructed (or use otherwise discouraged) to prevent them meeting the criteria for this exception. Conversely, one organisation felt there to be a risk that certain historical routes will start to be used just prior to the cut-off date merely in order to preserve their existence,

adding that "...it would seem a fairer and more workable approach to preserve rights over paths used in a way which satisfies the requirements of section 31 Highways Act 1980 in the 20 years prior to the cut-off and that the rights preserved should be those reflected by that use.

There was broad support for the proposal that footpaths, bridleways and restricted byways should continue to be protected from being downgraded or deleted on the basis of pre-1949 documentary evidence after the cut-off date.

Suggestions for additional categories that should be excepted

Whilst a significant number of respondents considered that no other exceptions would be needed beyond those proposed in the consultation, the majority felt there were a number of categories that were not covered and should also be protected. The basis for this was mainly the conclusion, reached early on in the Stakeholder Working Group deliberations that the intention of the cut-off is to extinguish historical but *unused* right of way. There was considerable overlap between respondents' suggestions for additional categories.

Some respondents suggested creating a schedule of categories that would be exempt, or alternatively a list or register of cases (anomalies, discontinuities) that will need resolution and should be preserved after the cut-off date. It is clear that the number of anomalies and unrecorded ways varies considerably among different authorities as well as the capacity of the authority to deal with the backlog.

The additional categories suggested are as follows.

- Any applications already registered that do not meet the Basic Evidential Test.
- Anomaly of status at parish boundaries, where the status of rights of way changes (or mapped routes may disappear) at parish boundaries. It was suggested that provision should be made so that applications to upgrade these to the higher status are exempted from the cut off date. Anomalies often relate to the section between the highway and the first stile having been omitted.
- Rights of way where their width is not set out in the definitive statement or with a width that is incompatible with their status. If after the cut off date the width of a right of way is questioned, it should be possible to rely on pre 1949 evidence to determine the width of such a route so that it can be correctly recorded on the definitive statement.
- Paths originally depicted as CRF / CRB (Carriage Road Footpath & Carriage Road Bridleway) but now often under-recorded. They should have been recorded on the list of streets or local street gazetteer.
- Any route which is on unregistered land and any route which is adjoined on both sides by registered land. This is suggested on the basis that would be reasonable to assume that any such land does not have a known owner and no one would therefore be disadvantaged.
- Government land – the rationale being that the aim is to reduce uncertainty for *private* landowners.
- Routes in use which a landowner then obstructs.
- Cycle ways.

- Urban paths established by development but not yet recorded. In urban areas, privately maintainable rights that are not recordable on the definitive map. Urban ginnels. Routes created by the local authority as the housing authority or highway authority but are not currently recorded as being highways. Paths laid out in former council estates, now maintained by arms length organisations, for example housing associations.

- Paths in the former county borough area not recorded on the definitive map but included in council records.

- Any road constructed with a separate carriageway and footway.

- Rights of way in former urban areas not covered by definitive map and statement.

- Paths or sections of path currently gated for reasons of security or social control, where redevelopment may render them useful in future.

- Rights of way that connect with waterways and fords (sometimes needing vehicular access, including for example public staithes in the Norfolk Broads area which provide loading and off loading facilities for goods and materials for local parishes). Right of access by stock for water at historic watering 'tracks' - often next to a bridge.

- All roads repairable ratione tenurae, ratione clausurae and ratione nocumenti.

- All inclosure public roads, private carriage roads, bridleways and footpaths.

- National Trails and other promoted routes which may be under-recorded.

- Potential 'ransom strips' on existing well-used public rights of way. There are many gaps between the recorded extents of rights of way and public roads. Often parish councils' surveys only included the archetypal path across fields. Often overlooked were the many bits of farm drives, tracks to fields and minor lanes which connect these paths to public roads.

- Rights of way in local authority areas that have a particular problem due to historic definitive map recording issues.

- Routes that provide a safe alternative to tarmac roads.

- Unrecorded public rights of way with user evidence that straddles 1949.

- Rights of way proposed in planning applications (particularly quarrying and landfill) are often overlooked because the works take many years, these may be omitted.

Question 4. Do you agree that the [Stakeholder Working Group's] proposals [in paragraphs 5.1-5.12] would be effective in improving the process of recording rights of way?

Total responses	194
Yes	151
No	4
Other substantive responses	39

Overall there was strong support for the Stakeholder Working Group's proposals for streamlining the procedures for recording public rights of way, but certain elements of the proposals received mixed views. Several respondents thought that there was a need to use an expert group to finalise the detail of the proposals.

Some respondents agreed they would improve processes, but questioned the overall impact on efficiency, and whether it would be sufficient to address outstanding claims before the cut-off date in 2026, or indeed whether it would address the number of lost ways that are not recorded. One respondent suggested implementing the proposals but without the cut-off.

Some felt that further streamlining is going to be needed to make public rights of way procedures workable in the long term. It was suggested that one way would be to enable statutory changes made to rights of way to be recorded on the definitive map and statement without the need for a legal event order. This would streamline the process and keep the map more up to date.

Because they attracted varying responses, different elements of the proposals are covered individually below.

It should be possible to transfer the ownership of application for a definitive map modification order (SWG (Stakeholder Working Group) proposal 19).

There was strong support for this – several pointed out that given the backlog of applications (many years in some cases) it is not usual for an applicant to have moved away or died. Some suggested that a transfer should be possible even if the original applicant is unable or unwilling to specify that it should happen. The process should not be too formal, but there should be evidence that the person who takes over the application has an interest in its success.

Some respondents stated that this already happens unofficially – but that a mechanism by which this can formalised gives transparency and may be helpful.

Applicants should not have to supply copies of documents that are held by the surveying authority or are readily available in a public archive (SWG proposal 4).

There was significant support for this, to avoid creating a barrier to members of the public and voluntary organisations. However several noted that not all documents would be in the authority's control and therefore the availability and associated costs could vary considerably. The authority could retain right to request copies, if necessary. Also "public archive" could be changed to "local authority/county record office archive".

Some respondents thought that applicants should provide the documents as this is a disincentive to spurious applications. It would also help if there were an application fee.

Other points made included the following.

- Applications should include a clear description of the evidence and its location.
- The proposal is sensible but unlikely to improve the process overall.
- It is not always sensible to rely on the authority to provide documents – many authorities/records offices do not publicise what documents they have, and many place restrictions on access/photography etc.
- The cost of providing copies of land registry reports and maps for all adjoining properties can be prohibitive – and the authority is likely to have access to this information.
- The authority should provide landowners/managers with copies of the documents concerned on request.
- It should remain the case that applications for byways open to all traffic be valid only if the full stated requirements of Schedule 14 to the 1981 Act are met (i.e. applicants furnish copies of all documents).
- The Winchester judgement did not require copies of documents for cases that do not fall within section 67(3) of the Natural Environment and Rural Communities Act 2006. The proposal could be effected by guidance without any change in law.
- Resubmission of applications rejected solely as a result of the Winchester case should be permitted.

It should be the surveying authority not the applicant that approaches landowners – and then only if the application passes the Basic Evidential Test. The authority should informally explain at an early stage the process and how the case will be dealt with (SWG proposal 5).

There was strong support for this as a less adversarial approach, which if followed up after the Basic Evidential Test could also be more efficient. It was observed that this would also raise the possibility that a dedication could take place where there is very strong evidence, as a cheaper and more efficient means of making a change to the definitive map and statement.

One respondent observed that the requirement for applicants to approach landowners is anomalous, because if an authority decides itself to make an order, it is not under any obligation to notify, or consult, landowners or occupiers before going ahead, and if owners and occupiers apply for orders to delete or downgrade ways already shown on the map

there is no corresponding requirement to notify users of the ways or organisations that represent their interests.

Some felt that landowners should be notified of all applications, not just those which have passed the Basic Evidential Test, this could help avoid conflict. Also that the land manager/occupier should also be approached (if different from the landowner). Some authorities felt that the applicant should provide the contact details of the landowners/occupiers.

Other points made included the following.

- This might increased the burden on local authorities, who often have limited information on land ownership; several suggested that applicants could help by identifying relevant landowners.
- The measure might undermine local authority neutrality.
- There should be no interval between application and notification.
- Applicants having to approach landowners and post notices ensures a certain commitment and responsibility and helps to avoid frivolous claims.
- Negotiations with landowner should include user groups and applicants – otherwise the process risks objections that could have been resolved by negotiation.

The requirement for newspaper advertisements relating to surveying authority notices of all types should be minimised by referring those interested to details online or at the surveying authority's offices (SWG proposal 10).

There was very strong support for this – provided that there would be an effective means of alerting all interested parties that an order is being made, and that no one's interests would be prejudiced by lack of access to the internet and transport to the surveying authority's offices. Notification should be by post or email if necessary and one suggestion was that that the default for owners/occupiers should be by post.

It was suggested that attention must be drawn to the fact that details have been posted on websites. Busy people cannot be expected to regularly look at websites in case something has been posted. Brief newspaper advertisements need to be made unless the authority is confident all interested parties have been informed. Email circulation of the notice and order is preferable to simply using websites.

Several respondents said it was important to make the whole order (not just the notice) accessible and there was a suggestion to include the co-ordinates of the route. There is a need to use plain English in notices, and user-friendly plans. There were suggestions that copies be posted in local libraries and on parish notice boards in addition to the authority website. One respondent suggested that newspaper advertising should continue until the 2026 cut-off point.

Several respondents suggested that the requirement for newspaper advertisements be dropped altogether – the requirement being expensive and not very effective. Although

there was also some concern the elimination of all newspaper advertising could mean information does not reach the intended target.

Some felt there should be flexibility to use whatever means are most effective – rather than specifying methods that may become obsolete.

Where an order is successfully challenged in the High Court, it is the Secretary of State's decision rather than the surveying authority's order that should be quashed – leaving the original order to be re-determined by the Planning Inspectorate as necessary (SWG proposal 16).

There was strong support for this proposal, and observations that current arrangements cause a lot of unnecessary work.

Other points made included the following.

- In practice this already happens in some cases.
- The change could go one step further and enable the High Court or Court of Appeal to make the determination as to status.
- One respondent disagreed, arguing that the surveying authority should have the opportunity to review its determination in the light of the quashing order – otherwise orders may need later modification, further delaying the process.

The Secretary of State should be able to split a case such that only aspects that are objected to need be reviewed (SWG proposal 14).

There was very strong support for this proposal, although one respondent disagreed and another suggested that the Secretary of State must split a case where only certain aspects are objected to. One respondent suggested this was already possible but that better guidance is needed.

It was observed that under the current process it seems that people can object to that part of the order the Secretary of State is proposing to confirm without amendments. Another said that the current arrangement discourages the making of orders for more than one route, for fear that all routes will be lost if one is challenged.

Orders should be published in draft and there should be flexibility for surveying authorities to correct technical errors in them (SWG proposal 15).

The majority of respondents were in favour of this, with some uncertainty over how it might work, and whether there might be disagreement over what constituted a "technical error". Some said that there were very few instances where objections are made on technical grounds; others said it was a significant issue.

Other comments included the following.

- A better alternative could be a provision for order making authorities to 'correct' orders between making and confirming, which would do away with the need to publicise a draft order.

- The review needs to go further to enable authorities to correct obvious anomalies on the definitive map and statement without the need to go through the order making process. More flexibility for highway authorities should be a key component of any change in legislation.

- Under the current system there is nothing to stop an authority showing a draft order to any of the interested parties before it is made (and in some cases they do). This is a crucial mechanism for consultation/negotiation and correction in advance and can save significant time and trouble.

- This may encourage sloppiness. Defra, working with ADEPT and IPROW, should seek to encourage better drafting of orders by local authorities in the first place.

- It would be better to have a change to the legislation allowing the Planning Inspectorate to assess minor technical/factual errors.

- This proposal may not be the best means of correcting technical errors; a power for authorities to correct errors at confirmation would be more efficient.

- The legislation should be altered to enable minor changes to be made to the order on confirmation as occurs with tree preservation orders.

Where objections to the surveying authority's determination are made on the basis of new evidence, an award of costs against the objector should be considered if it is clear that the evidence has been wilfully withheld. This should be possible regardless of the outcome of the case (SWG proposal 9).

All but one of the respondents who commented on this proposal were in support, observing that additional information should be flushed out when the surveying authority carries out its research and consultation exercise. However there were some concerns that it would be difficult to enforce fairly.

Other points made included the following.

- The word "wilfully" needs clear definition, guidance and application.

- The measure should not only apply to objectors, but also to applicants who fail to behave correctly.

- All the rules relating to costs should be reviewed and strengthened.

- Legislation could require a landowner who has been notified of an application to submit any evidence which he intends to rely on within a specified time, and otherwise run the risk of having costs awarded against him. However, it would not be appropriate to penalise a landowner who has genuinely 'discovered' evidence later on in the procedure.

- It may be better simply to regard such evidence as inadmissible unless extenuating circumstances are accepted.

- Applicants should be required to sign an affirmation of truth that all information available to them has been produced, even if some is prejudicial to their case. This applies in the Courts on disclosure and should apply equally here. Costs should then be imposed on an applicant who fails to behave properly, just as much as any objector.

Review of cases based on documentary evidence should normally be by means of written representations, but with the discretion to hold a hearing or inquiry if in all the circumstances it is likely to add value (SWG proposal 13).

There was strong support for this proposal, although one respondent considered this provision unnecessary. There was a suggestion that the Planning Inspectorate could trial such a regime straight away.

Some respondents felt it would not always be advisable to rely solely on written representations where complex evidence needs to be examined and discussed. It was also important to ensure that cases are publicised and that all evidence supplied (including by the public) is properly considered. It was suggested that better guidance would help address these concerns.

One respondent suggested that where applicants or objectors were refused a hearing or inquiry the reason for that decision should be explained. Another that the applicant or objector should be able to request a site inspection

Some felt that informal hearings were better as they were less intimidating to the lay person.

One respondent suggested the right to object should be limited to the registered landowners, those with a legal interest in the land over which the route runs, user groups and statutory consultees.

Surveying authorities should have a new power to reject without substantive consideration applications that do not meet a Basic Evidential Test, on the understanding that they may be resubmitted if more convincing evidence can be found". (SWG proposal 3).

Most respondents agreed with this proposal but pointed out there would need to be clear guidance on what the Basic Evidential Test consisted of (including for applications relying on post 1949 user evidence). Some thought that decisions to reject applications could still be vulnerable to challenge by judicial review unless there were some statutory appeal against a rejection of an application on this basis. It was suggested that the Basic Evidential Test might be piloted.

Other points made included the following.

- The criteria to satisfy the Basic Evidential Test could be set out in a document similar to that which provides for the validation of planning applications.

- If there is to be a Basic Evidential Test, there would need to be an opportunity to resubmit applications, otherwise it would be against the public interest.
- It appears one authority already refuses to accept applications that are flawed. Another said it preferred discussing definitive map modification order applications over the phone with the applicant before giving them access to the forms, which helped to weed out wasteful applications.
- Thought is needed as to how the Basic Evidential Test might be applied to post 1949 user based applications.
- An authority could also use the Basic Evidential Test to "weed out" already existing but undetermined applications that have no chance of success and reduce the number of applications lodged in the system. However some respondents were concerned about how fair this was on applications that had been a long time in the queue.
- There is a tension between this proposal and the proposal not to require copies of all documents, it was suggested that requiring copies of all documents could largely remove the need for formalisation of the Basic Evidential Test.
- All evidence should be given by a sworn affidavit and that all those supplying evidence should be available (where practicable) for cross-examination under oath at an inquiry.
- The Basic Evidential Test needs to be defined with a high threshold, and the authority should apply the Test within a specified period.

"The surveying authority should be allowed to discount summarily any irrelevant objections. It should be required to treat both these and representations made in support as registrations of interest in the outcome of the case" (SWG proposal 11).

In general, respondents supported this proposal provided that the power and the term "irrelevant" was clearly defined and that there were checks in place to ensure that people have a right to appeal for example through the Ombudsman or judicial review. However, some said that it was wrong for the only recourse for applicants to be judicial review.

Some respondents felt local authorities could misuse this power – one noted a particular risk where authorities are inadequately skilled. Another felt that local authorities are inherently likely to regard any challenge as vexatious. Some difficulty might arise when there is a difference of opinion in determining applications between council officers and elected members.

One respondent suggested that the Secretary of State should make more use of the provisions to award costs where irrelevant objections are made.

It was suggested that clear guidance would be needed if local authorities are to discount summarily any irrelevant objections. Good guidance would aid the fairness, consistency and transparency of decision making and would also help potential objectors to decide whether their objection is relevant. Guidance should also be made available on how a local authority that decides that an objection is irrelevant can be challenged.

One respondent thought that there already are legal tests which make it clear what is relevant and what is not.

There should be provision for basic factual corrections and clarifications of the definitive map and statement, even after the cut-off, subject to clear guidance and appropriate safeguards (SWG proposal 29).

There was significant support for this proposal, many observing that there are frequent errors and anomalies on definitive maps, discrepancies between the map and the statement, between the map and the route that is in actual use and anomalies on the ground (such as paths “stopping” at parish boundaries, or stopping short of a road) and so on. However many felt the scope of the authorities’ ability to do this should be carefully defined. It was suggested that some anomalies might be considered as an additional category of exemptions under Question 3.

While there was agreement that an authority should not have to go through the whole definitive map modification order process to make such corrections, several suggested a need to ensure the process remained fair to all parties, and perhaps to engage interested parties in some way. One respondent suggested that the virtue of present arrangements is their legal robustness, and putting in place a simpler process risks legal complications or challenges later on.

It should be possible for an owner to apply to a highway authority for authority to erect new gates on restricted byways and byways open to all traffic in line with existing provisions for their erection on footpaths and bridleways (SWG proposal 32).

There was some support for this proposal but also strong opposition from many respondents. Much of the opposition was on the point of principle that these are highways intended to be accessible to the public. Some respondents highlighted an inherent conflict between this proposal and the need to avoid "undue inconvenience to the public" as prescribed in the current legislation, pointing out that routes in question are carriageways so the circumstances under which barriers can be erected need to be very clear, justified and not prejudicial to users.

Some of the opposition was on safety grounds as some carriage drivers and horse riders, particularly those with mobility problems, find gates are very difficult to manage or in some cases dangerous to horse and rider – particularly with self-closing gates. The point was made that horse riders and carriage drivers depend heavily on this limited portion of the rights of way network.

There was concern that this provision would increase the risk of obstruction by tying shut or locking the gate.

Many respondents thought that it should be possible to go further with the legislative change, for example to:

- erect other gates/barriers where needed to deter unlawful use by e.g. motor vehicles;
- allow gates in gardens, driveways and other situations;
- reconsider the legislation on cattle grids and bypasses;
- extend the powers to carriageways in general – some roads are joined with byways or bridleway with no obvious physical distinction;
- erect gates etc for security measures;
- enable authorisation for a stile or gate to be revoked if the land use for which authorisation was granted subsequently changes, or the need otherwise ceases to exist;
- ensure that path user organisations (those prescribed to be notified of path orders) are consulted before deciding the matter;
- require the authority to hold a public record of all authorisations made under section 147 of the Highways Act 1980 ;

Other points made included the following.

- If hedged lanes are gated, they may then be used to graze animals, which could put users of the right of way at risk,
- Some respondents noted a risk that once a lane is gated, the landowner may then decide to remove hedges to incorporate the route into their fields, destroying the character of the byway. There should be protective measures for hedges, dry stone walls or other structures.
- There is a need to avoid situations where vehicles or horses would need to stop on main roads to open a gate to access a public right of way.
- Byways bounded on both sides could be excluded.
- It should be possible to use alternatives such as temporary electric fencing along the right of way.
- Local Authorities should have the power to reject applications where repairs to existing field boundaries or the erection of new fencing would be a more appropriate solution.
- There should be a proper revision of section147 (of the Highways Act 1980) and the associated British Standard
- When authorities use section 147 there should be a right for public to comment or object as often authorities take the easy route to retrospectively authorise an illegal, unauthorised obstruction.

Natural England should be added to the list of prescribed bodies consulted when a definitive map modification order is being considered (SWG proposal 8).

Responses to this question were quite mixed. Some felt it would be helpful but many commented that it was important to avoid unnecessary work – some suggested that Natural England should perhaps be consulted only where the route involves designated

areas such as National Nature Reserves and Sites of Special Scientific Interest; others noted that local authorities already have a biodiversity duty. The question was posed whether English Heritage and the Environment Agency should also be consulted. It was suggested that consultation with Natural England and other bodies could be dealt with through guidance rather than statute.

Several respondents suggested adding town and parish councils as statutory consultees, and several suggested Local Access Forums.

Question 5. Do you think that more use could be made of electronic communications, for example, to make definitive map modification order applications online and to serve notice of rights of way orders?

Total responses	201
Yes	180
No	4
Other substantive responses	17

There was strong support for this proposal on the basis that it would be more effective and less expensive than newspaper notices. One respondent observed that each public notice advertised in the local paper in this county costs around £400-£500, therefore a minimum of £800 -£1000 per case is spent on newspaper advertisements alone. However, the key was to simplify the process overall and not add to it. Many felt that applications online should be an option rather than a rule. One authority said it had been using this approach for a number of years.

There was concern about the need to consider those who had little or no access to electronic communications. A few respondents were very concerned that the quality of evidence would fall.

Other points made included the following.

- One solution may be to publish abridged or condensed notices to alert people to the making or confirmation of orders with full details being available online or (on request) by post or email. Many people (especially the elderly) do not have access to or knowledge of the internet and rely on their local press for information.
- Authorities may not be in a position to comply with the British Standard for scanning in and storage of documents which may later be used in court.
- Specific media may become obsolete – legislation should focus on the outcome not the method.
- There are serious implications by relying totally on electronic documentation, for example: (standards, costs/resources, equality of access, status of legal records, need for back-up, ease of accidental/undesired manipulation, fidelity to original records).
- Using electronic maps could add to confusion – resolution can be very poor.
- Not everyone has email and not everyone has high speed broadband that allows them to access and/or send large documents easily – may not always be practical to submit evidence electronically.
- Some authorities may deliberately or unwittingly make orders difficult to find on their website. It should be a requirement for Local Authorities to have a permanent link on their homepage which would direct enquirers to a dedicated public notice page, where

all notices and advertisements are stored by the Local Authority or have a national website.

- Paper copies should be sent to the land owners/ managers concerned unless they indicate that they are happy to receive correspondence in an electronic format.
- All statutory consultees to orders should be required to accept e-service of notices. There could be a list of registered stakeholders to be notified by email. Anyone should be able to register on a single consultation list held by the authority.
- It should also be possible for anyone to visit council offices to view orders and for copies to be available at libraries and posted on town/parish council notice boards.
- The content and language needs to be as accessible as possible.
- Guidance notes and forms should be available online.
- There should still be a requirement for relevant notices to be displayed on site.
- There might be an issue with signatures on applications and the validity of legal documents and perhaps with bogus representations.
- Processes could be more burdensome if parts are conducted online and other parts in hard copy.
- Recent Department for Transport guidance on traffic orders could be helpful in considering the options

Question 6. Are there any particular issues associated with these proposals which have not been captured and which we should consider?

Total responses	188
Yes	131
No	28
Other substantive responses	29

A large number of respondents answered yes to this question. The comments covered a broad range of aspects, including many suggestions that were relevant to other questions on the consultation. The points made included the following.

The need for more radical reform

- In the current political and financial climate a much leaner legal framework is required.
- The long term aim should be to see if we can come up with a better system of recording highways than those we have at the moment (the definitive map and statement, list of streets and local street gazetteer), ideally there should be just one. Accepting this as a principle would help inform how further rationalisation of procedures should develop.
- The requirement for legal event modification orders could be removed.
- Decision making could be devolved to a local level, with the local authority taking the decisions - including the confirmation of opposed orders, but with a capability for the Secretary of State to call in orders or decisions.
- It is hard to comprehend why an authority may take decisions in respect of planning that can permanently affect landscapes and affect communities and yet can't take a decision to divert a public footpath from one side of a fence to the other without referring it to the Secretary of State.
- The key question is whether the cut-off date is going to be implemented; and Government is not consulting about that. The obvious downside is that because of the proposals to protect certain rights of way, the aim of a definitive record will not be achieved in 2026, and rights of way law will continue to be complicated.
- It should be possible to stop the recording of historic but unused rights of way by specific statutory provision to that effect (instead of relying on the cut off date with exceptions); similarly, it should be possible to prevent the recording of paths that are unused and were called into question a long time ago.

The need for greater certainty for landowners/managers

- Rights of way applications should be brought within two years of being brought into question.

- Apply a res judicata principle that a claim could not be reopened if already subject to a decision; and prevent repeated applications on the same route where a decision has been made except in exceptional circumstances.

- Support the principle of the cut-off date by ensuring that all registered applications are determined by a certain date e.g. 2030.

Review

- There should be a review progress towards the 2026 cut-off in terms of reducing backlog of definitive map modification orders.

- How will performance management and monitoring of surveying authorities be achieved?

- There should be a re-examination of how section 54 of the Countryside and Rights of Way Act 2000 will operate in practice. It could be that the benefits for landowners and the new burdens imposed by the cut-off will mitigate against commencement.

- The stakeholder review panel to look at progress on recording or protecting pre-1949 rights of way (proposal 21) should not happen before 2020 to see if there is still a case for proceeding with the cut-off date, or for deferring it.

Fairness to all user groups/non discrimination

- User groups often have evidence but are unaware of how the procedures work.

- It should be possible from the outset to take account of factors other than the existence of a right of way in law, for example privacy, security, fear-of-crime, proportionality.

- Consideration should be given to equality of access. Past legislation, for example the Natural Environment and Rural Communities Act 2006 has discriminated against one class of user, recreational motorists, despite the proportion of the network open to them being so small. Such divisive legislation can create problems between user groups.

- Green lanes should be reclassified as restricted byways if the majority of users are being inconvenienced by motorised recreational vehicles.

Widths of rights of way

- The width of a public right of way is frequently contested, and there may be little or no evidence. In some cases recorded widths are based on the width of the beaten track and not the legal width of the way. Widths in the rights of way Act 1990 could be applied in all cases where there is no existing record or width is not defined by boundaries.

Costs/resources

- The system can only work if local authorities are provided with sufficient resources to enable them to process applications within a reasonable period of time. Experience to date suggests that the risk of prevarication and non implementation is high.

- Although the proposed reforms appear to be sensible improvements, no evidence based assessment has been made of their impact on resourcing and thus the real effect on processing times

- Local authority cost cutting and staffing levels is likely to get worse over the next few years.

- Some surveying authorities have adopted a scorecard system for evaluating definitive map modification order applications. Currently, it seems, the costs of bringing the route into use and future maintenance is primarily the reason why definitive map modification order applications fail.

- The Discovering Lost Ways project failed due to lack of resources – the problem of lack of resources needs to be addressed.

- A fee applied to all applications could help cover costs and prevent spurious or weak applications.

- Costs should be awardable in all cases. Full disclosure should be required and claimants to sign a statement.

- Surveying authorities need financial incentives, which could come from money saved from eliminating newspaper advertising and not having to submit so many cases to the Secretary of State.

- The consultation proposals are a further set of radical changes to procedures, when many of the last set of changes have only recently been implemented. Local authority staff will have difficulties in incorporating new practice in an area of law that is highly specialised and prescribed and is already subject to a high turnover of legislative changes

- There seems to be a lack of appreciation of the role of the voluntary sector (i.e. individual members of the public) who research and submit applications for definitive map modification order orders. This is a lengthy and time-consuming process, and one that can be quite expensive.

Local Authority interests in a claim

- If the authority has a role in the process other than as surveying authority, for example as landowner or 'applicant' then great care is needed to ensure fairness and transparency.

- The procedure for local authorities to record public rights of way on their own property needs clarification as they are unable to dedicate under the 1980 Highways Act.

Downgrading and upgrading bridleways and byways:

- Applications to downgrade can result in a lot of wasted resources. The Secretary of State should be rigorous in only directing that such orders be made where it can be shown that new evidence not available during the 1949 assessments has been discovered. It must be assumed that local knowledge in 1949 was far greater than any assessments made more than 60 years later.

- The 'upgrading' of many routes to at least bridleway status also needs to be considered due to improvements in cycle design and increasing needs to encourage prams and wheelchairs into the countryside.

Local judicial procedures

- Circular 1/09 should be amended to encourage the use by local authorities of applications to the local justices under section 116 of the Highways Act 1980.

- More use could be made of the hearing procedures as an alternative to public inquiries. This could save money and time the public may find hearings to be more understandable and less intimidating

- Definitive map modification orders should as a rule be considered by a court or tribunal as a judicial process, with witnesses on oath (and subject to the perjury act).

- Consideration should be given to legally qualified experts determining definitive map modification orders on behalf of the Secretary of State as opposed to Planning Inspectors.

Planning Inspectorate/Secretary of State decisions

- The Planning Inspectorate should be more robust in its decision making. In too many instances decisions are taken that err on the side of caution. This is particularly the case where appeals are lodged following the surveying authority declining to make definitive map modification orders.

- Detailed guidance should be issued on matters to be included in decision letters.

Site visits and local knowledge

- Inspectors should be required to carry out a site visit in respect of all cases when requested to do so by an applicant and or objector. The physical appearance of a route is often an important piece of evidence in the determination of an application.

- It is important to make use of local knowledge, for example through parish or town councils and non-statutory consultee groups. Local Access Forums could have a role, perhaps as statutory consultees.

Horse riders and carriage drivers

- The bridleway network is limited and fragmented. Any lost route identified where the status is unclear should be allocated the minimum of bridleway status (unless it links two public footpaths and there is no clear evidence that it is a bridleway.

- Horse riding is a growth industry in the countryside, an unacknowledged economic activity supporting a range of jobs.

- Equestrians are vulnerable on busy roads and need alternative routes.

- The Wildlife and Countryside Act 1981 took away from carriage drivers the automatic right to use Roads used as Public Paths this was only partially restored by the Countryside and Rights of Way Act 2000.

Heritage and ecology considerations

- Proposals 8 and 32 in particular focus on current land use and suitability of the route and may detract from the historic value of the route.

- There is a significant historical heritage element to rights of way and that rights of way play a part in preserving the nation’s heritage; the 2026 cut-off puts this at risk.

- There is increased use of motorised transport to access areas with better rights of way networks – and increased wear and tear on path surfaces in 'honey pot' areas.

- Use of rights of way and access areas can have an impact on local ecology. This needs to be managed through local organisations as well as those such as Natural England.

Guidance

- Guidance is fragmented and often poor or out of date – good guidance is fundamental.

- Need guidance on submitting and assessing user evidence to ensure it reaches a required standard.

Right to object

- The right to object should be limited to registered owners and those with an interest in the land plus statutory consultees, parish councils and user groups.

- Those whose land is affected by a definitive map modification order application should automatically be parties to any appeal regarding that application.

- The landowner/manager should be able to see the full user evidence forms from the date a claim is submitted.

- More scope is needed for local authorities to negotiate and deal with objections.

Role of local politicians

- Local politicians (in the form of regulation committees) should be removed from the process, or prevented from overruling the decisions and advice from their own professional rights of way staff. Elected politicians can be heavily influenced by a small but powerful number of their electorate. They should be treated as any other interested party and not have a right of veto.

- There should be checks as to how county council members come to the decisions that they do on certain types of definitive map modification order applications. Often clear evidence is disregarded and weaker evidence is made to look as though it outweighs primary evidence. Rights of way officer's recommendations can be overruled on irrelevant points and the principle of a committee acting in a quasi judicial manner is not being adhered to.

Best practice

- For the best performing local authorities these proposals are unnecessary

- Having streamlined the procedures, a maximum time limit should be established not just for surveying authorities but also for the Secretary of State to deal with applications and objections.

- There needs to be a consistent approach across all counties. Each county has different procedures and classification of rights of way. In some cases a rights of way officer may make an informed recommendation which is quashed by a committee of non-experts.

- A local, 'independent' body should have the final say on local rights of way issues - not central government.

Serving notices

- It would be helpful if surveying authorities were automatically authorised to advertise a proposal on site, once standard enquiries into land ownership had been exhausted without success.

Resolving anomalies.

- There are a large number of anomalies with significant impact on the utility of the rights of way network. There is a need for a fast track mechanism to make minor changes, for example where there is discrepancy between the ground and the map.

- It should be possible to reserve use of pre-1949 evidence to clarify details of recorded paths.

- On consolidation, the Ordnance Survey base map detail is automatically updated. However, the Definitive Statement is not and may relate to features that are no longer in existence due to development. A mechanism is required to update geographical markers (railway embankments, fields, streams, hedges etc.) without the need to carry out either a full Definitive Map Modification Order.

Unclassified County Roads

- Legislation should be amended to enable the resubmission of applications for vehicular rights which were previously registered but rejected solely as a result of the Winchester case.

- As originally proposed in the run-up to the Countryside and Rights of Way Act 2000 all unsealed routes should be added to the definitive maps with a new category of ‘Unclassified Byway’ with at least restricted byway status with actual rights to be determined over time. This would help protect them and avoid the need for them to be individually determined in each case.

- Rights on unclassified county roads must be protected

- Unsealed roads should be protected from damage by motor vehicles by reclassification into bridleways or restricted byways. The provisions in part 6 of the Natural Environment and Rural Communities Act 2006 must not be weakened in any way, so that no further byways open to all traffic can be created except in the very limited circumstances provided for in the Act.

The Basic Evidential Test

- A test of balance of probabilities should be applied at both the making and confirmation stages of definitive map modification orders.

- Introduce a test now so that only rights over routes which are ‘reasonably useful’ can be preserved and added to the definitive record.

Cycle ways

- There should be a mechanism for these to be added to the legal record and for them to have the same protection as public rights of way.

- A review should be carried out of how routes for cyclists could best fit in with the highways network to form an integrated whole, and provide for usage by all non-motorised users.

- A review of routes for cyclists is overdue. It should be possible to create a cycle track from scratch in the same way as for a footpath or bridleway and to be able to record it on the definitive map. There have been calls to simplify the rights of way categories by merging bridleways and cycle tracks into a new single status. However, some landowners will dedicate a route for cyclists and walkers but not for horse riding so it would result in fewer routes for cyclists being created.
- The Natural Environment and Rural Communities Act 2006 has fragmented the higher rights of way network, and implementing a cut-off before lost ways are registered will add to the problem.

Potential impact of the ‘right to apply’ provisions

- It would be a shame if the efficiency savings accrued by the Stakeholder Working Group proposals were negated by introduction of a statutory 'right to apply' for public path orders, when anyone may already ask a local authority for a public path order.

Temporary traffic regulation orders

- The procedures whereby temporary traffic regulation orders are extended by the Secretary of State should be reviewed as this appears often to be simply a rubber stamping process.

Rights of way and planning

- It is important that the potential changes to the application process for the stopping-up and diversion of rights of way and other highways are considered jointly and in a coordinated way. For example, it will be particularly important to preserve the ability to submit a combined right of way and highway diversion, or stopping-up order, under Section 247 of the Town & Country Planning Act.

- There should be an end to the need for a temporary traffic regulation order closure by newspaper advert to allow for works to existing rights of way affected by orders or path works associated with development, where the works are anticipated to take less than two weeks. This accompanied by a requirement to post site notices rather than costly local paper adverts. This would alert users of right of way to the disruption, whilst materially reducing administrative costs and delays to authorities and developers carrying out minor works that require short path closure.

Case law

- There are concerns that the decisions in the Dunlop and Andrews cases are preventing minor public highways created in Enclosure Awards from being recorded. There is need for government to overturn these decisions well before the cut off.

Open data

- Rights of way data should be open, i.e. published in a consistent format without restriction on its re-use, for example for journey planning.

Question 7. Do you think that the mechanism [proposed in paragraph 6.2 and annex B], would work effectively?

Total responses	200
Yes	84
No	29
Other substantive responses	87

While the majority of respondents supported the principle of streamlining processes, opinion was divided as to how this should be done. There was support for further work to develop the detail.

There were concerns that the processes would need to provide adequate opportunity for applicants, landowners and third parties to submit evidence and views, and that the flow chart does not appear to allow to provide for this. It would be important that the authority and the Secretary of State ensure that they consult everybody.

Many respondents felt that the proposed procedure would need to ensure that the order and all relevant evidence is put into the public domain enabling it to be tested. Even where all evidence has been tested, there may be elements that need legal clarification and the conclusions that are drawn from the evidence must be legally sound.

There was some concern that abandoning the current threshold for making a rights of way order, which is that the right of way is 'reasonably alleged to subsist', and always using the 'balance of probability' would result in a lengthier determination process in order to resolve all conflicts of evidence.

Some respondents said that the Basic Evidential Test would need to be carefully defined – and should draw a clear distinction between "reasonably alleged" (which should be adopted in the Basic Evidential Test and "balance of probability", which would be the test for making a definitive map modification order.

Some respondents questioned whether the volume of appeals justified re-designing the current processes.

Other points made included the following.

- There should be a lighter touch process of appeal (simpler than judicial review) where the surveying authority misapplies case law.
- The definitive map modification order appeal system needs to be simplified because the evidence requirements are too burdensome on applicants.
- The processes for both applicant and objector should be similar. Both being based on the process currently set out in schedule 15 of the Wildlife and Countryside Act 1981
- The main reason for non determination of applications is lack of resources. This will not change by placing an additional burden on the order-making authority to carry out

a full assessment in a short timeframe. In applying a time limit there may be a risk that more cases than necessary go to the Secretary of State, because the local authority has not had time to properly consider them.

- The proposed system would require higher standards of guidance and training at a time when local authorities are cutting resources.
- Landowners seem to lose opportunities to present their case and counter user evidence.
- The consideration at appeal stage should be open to all parties.
- The role of an impartial third party is important.
- Authorities should specify the grounds for refusal.
- Appeals would need to be advertised to ensure that all evidence is considered by the Secretary of State.
- It would be important to discourage objectors from withholding evidence.
- Would be dangerous in the interests of natural justice to remove the 'reasonably alleged to subsist' test for user-based claims, effectively changing the evidential threshold. Conflict of evidence cannot be 'balance of probability' (the *Emery* case).
- The main issue is what constitutes “a comprehensive and exhaustive assessment of a definitive map modification order application, including landowner views and evidence”.
- It is not clear in the proposed mechanism and documentation that in fact documentary and user based claims have to be treated differently.
- The schematic diagram seems to assume that it is only claims for new paths or for higher status by the local authority or user, whereas the process may be instigated by the landowner to extinguish paths or reduce the status. Where landowner evidence is noted, user evidence should also be included.
- There is a need to ensure that orders made on direction of the Secretary of State are actually confirmed, currently many are not.
- If an applicant has to present evidence at a public inquiry when the order-making authority decides to take a neutral stance and the order is confirmed, the applicant should be able to recover costs from the authority.
- There may be occasions when the local authority has made an error in assessing the right of way application and so it may be wise to allow the applicant to appeal directly to the local authority if they believe a mistake has been made.
- Schedule 14 appeals should be scrapped as they simply divert resources from chronological determination. Applicants could still refer unacceptable delays to the Local Government Ombudsman.
- The right of appeal should extend to partial rejection (e.g. lower status than applied for) as well as total rejection.

Question 8. Do you think that there would be a residual risk that it would be in a local authority's interests to decline to make an order in the first place?

Total responses	198
Yes	111
No	40
Other substantive responses	47

Responses to this question were very mixed – even from respondents in the same sector. Many required more detail and potentially more discussion, suggesting that the response of local authorities would depend on a range of factors. It was questioned whether there was evidence that this was a potential problem.

Some respondents thought there would be a risk with borderline cases, or contentious cases where there is dispute over whether or not the balance of probabilities test can be met, and that the political motivations of councillors might play a part.

Points made included the following.

- The risk could be minimised by recharging order-making authorities.
- Local authorities' views of the likely outcome of the Secretary of State's decisions are a significant determinant of behaviour – for example an order-making authority might be minded to make orders if they believe that the Secretary of State would direct them to do so anyway.
- There is currently no incentive for the local authority to carry out its statutory duties and process the applications correctly in the best interests of the public.
- In some authorities political pressure from national groups is already evident and the order-making authorities are aware that if they process definitive map modification order applications they will be dragged in every case through expensive public inquiries. The easier and cheaper way for the order-making authorities to find a reason not to make orders.
- The local political situation may increase the risk of the order not being made. The council's decision is often a political one and not a quasi judicial one, based on the facts. There needs to be a mechanism for impartiality and a mechanism for not avoiding duties. Councillors should be removed from the processing of individual cases.
- A poorly resourced order-making authority may be more likely to decline to make an order.
- An important issue for some order-making authorities is not whether order-making can be left to the Secretary of State but the cost of dealing with the appeal (when there is already a backlog of other cases).

- For order-making authorities, there would be as much work involved in incorrectly refusing to make an order as there would in making and defending an order.
- It is not so much that the authority declines to make an order but rather that the authority delay making an order because of resource shortages.
- Authorities should give reasons and evidence for refusing to make a definitive map modification order.
- The current process of appeals to the Secretary of State is a better way of getting a consistent approach nationally, rather than a complete reliance on authorities deciding applications on the balance of probability.
- There are some local authorities that continually perform poorly in these areas. There may be a role for a local forum to oversee this process.
- The risk of Ombudsman complaints for maladministration would be an effective deterrent.
- If the other Stakeholder Working Group proposals were implemented, additional associated costs would in any case be much reduced.
- The process should be about developing a positive asset based upon a proactive team getting out into the countryside and neighbourhood to promote rights of way, settling any conflicts with common sense and negotiation.

Question 9. Do you think that the alternative mechanism set out [in paragraph 6.3] would work effectively?

Total responses	192
Yes	74
No	42
Other substantive responses	76

As with question 8, opinions were mixed, with some uncertainty and calling for more detail. Several key points repeated those made in response to the previous question.

Points made included the following.

- The grounds on which a local authority should have made the order need to be clearly defined – recharging should not automatically apply in all cases where the Secretary of State makes an order.
- It is not clear that it is possible to merge two separate processes into one (i.e. appealing against non-determination and referring objections to the Secretary of State).
- Rather than costs, it is the evidence and the authority's view on the likely stance of the Secretary of State that will determine whether an order is made. The proposal may not be addressing the right issue.
- The proposal risks imposing an additional burden to local authorities.
- Authorities might make orders to avoid costs being awarded rather than considering the legal tests properly – risking more work and more orders failing to be confirmed.
- A more effective method would be to continue with the "direction" protocol currently in place but introduce a timescale within which an Order should be made.
- Inconsistencies within the Planning Inspectorate and between Inspectors would mean that order-making authorities that refuse to make an order in a borderline case could be penalised unfairly if an Inspector decides that an order should be made and re-charges this to the authority.
- Could neighbouring authorities with available expertise and capacity provide a service at cost to local authorities who are struggling?
- The applicant should bear the costs if the authority's decision is upheld.
- If the authority has assessed all the evidence on the correct evidential test and can provide reasoning for that decision, then it has not acted unreasonably. It should be able to come to that decision without the fear of cost awards being made against it. If the correct evidence and process has not been followed then the applicant will always have the remedy of a judicial review.
- Consideration of definitive map modification order applications is often finely balanced and it would generally be a difficult judgement as to whether the authority "should have" made the requested order or had otherwise failed in some way

- There could be disputes arising should the Secretary of State seek to recharge the local authority where the authority believes its decision to decline an application was sound.

- Some authorities may be tempted to leave the order to the Secretary of State if they have staff shortage or think that the application is likely to involve difficulties; they can then concentrate on determining the simpler cases. One authority remarked that they: "would happily send everything your way and pay your costs. This would be very tempting for us."

- This would provide a mechanism for authorities to reduce the need for specialist rights of way staff further and to pay the costs of referring an application to the Secretary of State as and when they come round. This could result in a negative impact on service overall.

- What evidence is there that authorities fail to make orders because of the cost? Other documented problems should have greater priority.

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Question 10. Do you have any other suggestions for ensuring that cases go to the Secretary of State only once?

Total responses	189
Yes	31
No	135
Other substantive responses	23

Opinion was divided between those who support the consultation proposals as workable, and those who consider that different proposals need to be developed. There was concern that the new process would overload the Secretary of State with cases unless there were extra resources in local authorities. In support of the current process it was observed that the current system may be cumbersome but it does facilitate legally sound and defensible outcomes.

Points made included the following.

- There needs to be some mechanism to ensure the surveying authorities fulfil their statutory duty, for example tribunal of first resort (as for Nitrate Vulnerable Zone appeals).
- It should become an established principle that cases can only go to the Secretary of State once and that there is only a single opportunity for an appeal in any one case.
- The appeal stage should be dealt with by written representations to avoid double inquires.
- The Schedule 14 appeal against refusal process should be more similar to the Schedule 15 process for determination of opposed orders. Both sides should have equal opportunity to appeal at all stages
- The grounds for making a schedule 14 appeal could be restricted.
- Removal of the schedule 14 appeal process would enable cases to go only once to the Planning Inspectorate. There would still be scope for judicial review where the local authority had acted unreasonably/unlawfully.
- Applications that have been determined and turned down once should not be allowed for the same route. In other words a “res judicata” principle should prevent reconsideration of any matter already determined.
- An application-based order made by the local authority but turned down by local politicians should also be referred to the Secretary of State.
- The Secretary of State should apply more robust tests at appeal stage.
- Allow the Inspector greater powers. Give Planning Inspectors more powers to confirm a modified order without further consultation, for example ability to modify the status without the need for a new order and re-align if it is to a line on land in the same ownership.

- Local authorities could establish separate appeal panels.
- The Secretary of State could charge local authorities a fee to be returned if the case is found 'in favour' of the local authority. On appeal the Secretary of State should charge the local authority whether or not an order results.
- Local authorities should be able to assess the contentiousness of a particular order and if it is considered that there is a high likelihood that the order will be opposed then they should be able to refer it directly to the Secretary of State to make the order and deal with any objections at the same time.
- If an authority decides to not make an order, and the applicant appeals, then both the authority and the appellant should make submission to the Secretary of State setting out their reasoning for deciding not to make the order, and appealing against that decision, respectively. The Secretary of State could then consider both sides, and decide whether or not to make the order. If the Secretary of State decided to make the order, it would then be treated as an 'objected to' order.
- The Secretary of State could make a costs order against either the authority or the appellant if either one had behaved unreasonably in either declining to make the order, or in appealing against that decision.
- Bring all public rights of way order making processes into line with the planning process. The local authority should be in a position to determine all applications whether an order is made or declined, with appeal to the Secretary of State, who may choose to call in a matter or appoint an inspector should the decision prove particularly contentious, or the decision appear flawed. This would fit with the general drive to see decision making devolved to lower levels where appropriate.
- There is an argument around economies of scale and fairness and consistency that suggests that the Secretary of State should take on the order-making function in its entirety.

Question 11. Do you agree that applicants and affected owners should be able to seek a court order requiring the authority to determine an outstanding definitive map modification order application?

Total responses	195
Yes	96
No	68
Other substantive responses	31

The majority of respondents agreed with this proposal. Those who agreed made the following points.

- This would hopefully be as last resort. Other proposals in the consultation, for example the Basic Evidential Test, should help avoid the need for this. There is a need to protect the authority from abuse of this process. Such orders should only be allowable under circumstances of substantial and unjustifiable delay, the criteria for which need agreement.
- This measure could help deliver more certainty in pending cases.
- There would need to be guidance on costs.
- It should provide a definitive timeframe for all parties to collaborate and negotiate a suitable settlement.
- The level of the current application fee will put off many voluntary organisations. It is therefore important that no fee is required for such applications or that any such fee should be borne by the surveying authority.
- It is right that landowners/manager and applicants have the same rights.
- The magistrates could direct the local authority to make the draft order within a certain period of time, or if not they could direct the local authority to reject the application and decline to make the order.
- The original Stakeholder Working Group proposal should be adhered to, i.e. that the applicant/landowner can serve a notice after 12 months and then a 36 month period is allowed before the case can go to court.
- The authority should be able to go to the court within 3 months of an application to ask for a further period of up to 18 months where they can demonstrate that the case is particularly complex.
- Before beginning the process, the complainant must have gone through the internal complaints procedure for the local authority as a prerequisite prior to approaching the court. The court must first insist on being presented with the evidence that the complainant has followed the relevant procedures prior to accepting the application.

Those who disagreed made the following points

- This would add more expense and complication to the existing process, replacing a statutory duty which is free at the point of use. It would also add a burden to local authorities and the courts. It could lead to rushed decision-making.

- Court costs have become prohibitively high for most individuals to consider and the presence of the opportunity to go to court may lead to the Ombudsman refusing to take up cases of long delay on grounds of maladministration.

- The appeal should continue to be made to the Secretary of State but powers of enforcement and/or penalties should be in put place for authorities which persistently do not achieve required timescales.

- This could exacerbate existing difficulties with magistrates courts brought about by cuts made to HM Courts & Tribunals Service and by recent bench mergers.

- The authority should suffer an automatic civil penalty of say £10/application/day for each day beyond a year that it does not issue a decision, and £100/application/day for each day beyond a Secretary of State direction that it has not determined an application. As soon as an authority can see the projected cost, it will start to spend appropriately on resources to clear cases. (For authorities with a backlog, a transitional period would be necessary.)

- Delay is largely only ever due to resource issues and a possible solution may be to introduce a charge for the processing and determination of a definitive map modification order application.

- The proposal does not take into account the significant backlog of cases held by many authorities. Another option might be that applicants and affected owners would need to prove that their case merited higher priority.

- The comparison with sections 130A–130D of the Highways Act 1980 is erroneous because there was no existing backlog of applications to deal with obstructions when the legislation was introduced.

- It could quickly become an unmanageable process if court orders were sought with any frequency.

- The Secretary of State could adopt a much firmer line with the existing provisions, which could be extended to allow a similar right for landholders.

- Sections 130A–130D of the Highways Act 1980 have not been as successful as claimed. It has had the effect of skewing priorities to those who will go to court at the expense of the rest. The mechanism has been abused by individuals serving notice on the authority without any prior communication.

- It is not reasonable to expect applicants or other parties to accept the costs of a court order just because the authorities are not executing their statutory duties. And it could favour those most able to pay leading to downgrades and extinguishments being prioritised.

- The complexity of some cases can mean that even the current timescale of 12 months is not sufficient to reach a resolution – and there are usually underlying issues as to why cases cannot be progressed. A more realistic time limit should be introduced.

- Where sufficient resources cannot be guaranteed to be available, the granting of court orders will be counter-productive. Surveying authorities may be overwhelmed by large numbers of court orders that they cannot process in a timely way. The term ‘reasonable timescale’ would have to be very clearly defined with some regard given to what it is actually possible to achieve.

Question 12. Do you think this is an appropriate way to resolve undetermined definitive map modification order applications?

Total responses	193
Yes	78
No	83
Other substantive responses	32

The key points made by those who agreed were as follows

- This should be a measure of last resort. Experience with use of the sections 130A–130D of the Highways Act 1980, and section 56 of the same Act, shows that often the service of the initial notice in the procedure is sufficient to push an authority into taking the required action. In many instances it is quicker and easier to deal with the problem than to defend not doing so in court.
- The surveying authority should be given the opportunity to justify non-determination based on available resources, local priorities/policies, Rights of Way Improvement Plan statement of actions etc.
- There would need to be severe penalties if the local authority ignores the court order.
- There is a cost involved in taking action in the magistrates court, which could be a significant barrier to some applicants. Costs could be recharged to the surveying authority.
- There needs to be a procedure to ensure any case is referred to a judge with the right competence.

The key points made by those who disagreed were as follows

- Given that the resources are not in place to process applications more quickly (giving rise to the perceived need for this mechanism), this proposal can only cause increased pressure on staff and frustration in those who have been granted court orders the terms of which cannot be met.
- This authority has received 4 notices [under sections 130A–130D of the Highways Act 1980] in 6 years (3 in the last 2 months) – often for trivial or easily resolved matters. More complex cases involving obstruction are almost all subject to the exemptions provided within the act. The implications with definitive map modification order applications are significantly different, the resource required to determine an application usually being greater than obstruction cases, and with no prospect of being able to recover costs.
- There is a flawed analogy with the removal of obstructions because the timescales involved are completely different.
- The consultation document misinterprets the success of sections 130A–130D of the Highways Act 1980.

- Court orders will force an authority to make an order that may be low priority. They will not help with the backlog of applications that may be of a higher value to the public.
- There is already an established complaints procedure.
- The number of unresolved cases in the system makes this unfeasible. The backlogs of unresolved applications should be brought down instead
- Those with the greatest resources will succeed while others are disadvantaged.
- There needs to be a simpler and low cost alternative, for example an independent commissioner.
- Giving rights of way work to better performing counties would be more effective.
- Magistrates courts are not best placed to make technical decisions on rights of way.

Question 13. Do you have any suggestions for alternative mechanisms to resolve undetermined definitive map modification order applications?

Total responses	186
Yes	102
No	59
Other substantive responses	25

There was a wide range of responses to this question. Some noted the competing demands on local authority time and money and suggested that how these demands are met is essentially a local decision; central government applying sanctions could undermine the ethos of local decision making.

Some felt that the current system is balanced but that the fundamental problem is a lack of resources and any amount of tinkering with the system would not solve that. Problems are likely to continue as long as they are under-resourced.

The following were suggestions for alternative mechanisms.

- Any application that has not been determined within 24 months could be deemed to be a refusal of the application.
- Any application that not determined within 24 months, and having received no objections from those concerned, should result in an order.
- The Secretary of State should resolve definitive map modification orders with local authorities paying a fixed rate.
- Magistrates court costs should be recovered from the surveying authority.
- Better visibility of applications in process (preferably using existing IT) should allow poorly performing authorities to be identified, and assistance given or pressure applied.
- If an authority refuses to determine an application within the specified period, the authority could be fined. Alternatively, authorities could be given a financial incentive to determine orders within a year.
- Use land tribunals - if they reflect local views
- Introduce binding arbitration, for example by the Planning Inspectorate.
- Close monitoring of surveying authority performance in preparing for the cut-off (proposal 23) would help resolve undetermined definitive map modification order applications. Baseline information on backlogs (proposal 22) is potentially already available from definitive map modification order application registers. Defra could also assist landowners and user groups wishing to monitor performance by requiring authorities to publish assessments of their performance in a standard format in their Rights of Way Improvement Plan updates.
- Allow the work to be outsourced to better performing local authorities.

- Introduce a more robust evidential test that could lead to a right of way being recorded by default.

- The applicant should do more of the research and informal consultation, following agreed templates and guidance.

- Introduce a non statutory public inquiry, with the results presented to the authority. There must still be the 12 month period for appeals.

- Introduce a procedure similar to the small claims procedure in a county court, where people can represent themselves and costs are not awarded.

- If the application is deemed of low public value as determined by the authority's priority system then it should remain unresolved.

- Authorities should be encouraged to publish programmes of work – and should be able to set their own targets and guidance so that applicants can make formal complaints should the authority fail in their case. Have a priority system in place where applications are judged on certain factors and then awarded a high, medium or low priority.

- Authorities could have a statement of priorities which for example the Local Access Forum or the Planning Inspectorate national casework team could monitor/challenge.

- The tribunal process in the National Parks & Access to the Countryside Act 1949 would make 2026 achievable. There is a case for re-running the whole 1949 Act process, with amendments, as the best way to deal with lost ways. It would also allow many of the existing outstanding anomalies on the network to be addressed far more cost effectively than dealing with each one using the 1981 Wildlife and Countryside Act 1981 process.

The following comments and suggestions were made about existing mechanisms

- Any applicant not satisfied with progress of an application has the opportunity to apply to the Local Government Ombudsman.

- The authority's internal complaints procedure should be followed in the first instance.

- Ensure that the Secretary of State gives effect to existing legislation by directing local authorities to determine applications. The problem is the current lack of objective criteria – but this could be remedied. Direction could be automatically issued if the application had remained undetermined for more than, say, 18 months to 2 years.

The following suggestions were also made, which did not to address the issue at question, i.e. how to get authorities to determine applications

- Amend primary legislation to introduce a test so that only rights over routes which are 'reasonably useful' can be preserved and added to the definitive record.

- Introduce an application fee for definitive map modification orders to cover the basic administrative costs to deter speculative applications. This should be recoverable if/when the relevant definitive map modification order is confirmed.

- Allow authorities to determine applications solely on evidence submitted by the applicant and any objector.

- Apply the principle of res judicata i.e. once an application has been determined, it should not be possible to make repeat applications.

- Introduce an “amendment notification” procedure to allow local authorities to make de minimis changes (for example correcting discrepancies between the map and the actual route; or confirming the presence of a gate) without going through the whole definitive map modification order procedure. This would also release resources to deal with more complex applications.

- Objections should only be allowed against clear prescribed criteria. Often objections that are vexatious cannot be separated out from true evidential concerns. If a comprehensive list of acceptable and unacceptable reasons for objections could be provided, this would reduce the number of objections.

- Introduce an absolute time limit for duly-made and registered applications - this could be linked to the Basic Evidential Test requirement.

- Authorities could apply to the Secretary of State for an extension to the 12 month timescale where justified.

- Prioritise this service and have expert advice available to streamline applications.

- Provide sufficient funding to enable local authorities to provide adequate staffing and resources – in the current climate this must be ring-fenced.

- Bring proposals set out for 2026 forward. Given current resource limitations it is unlikely that authorities will put in place long term measures to tackle the backlog of work. We are therefore still just putting the problem off.

- Round-table meetings between interested parties should help reach amicable agreement on the route. Surveying authorities could have powers to subpoena parties to attend.

- A more positive approach to the value of the historical evidence would help.

- Combine similar applications and orders into an omnibus order. The Secretary of State could split the order if objections were received to part(s) of the order.

- Enable appropriate diversions to recognise contemporary realities at the time a right of way is discovered. Local authorities should recognise that the reasons for the existence of a right of way change over time.

Other points that were made in response to this question were as follows.

- The current and potential backlog relating to 'lost ways' is largely linked to the complexity and requirements of the legislation and the legal order making process. Unless the burden of evidential proof is changed and the manner in which it is considered, then there will be little realistic chance of the matter moving forward. Having a huge number of cases logged that will not be resolved for decades at current rates has introduced the very uncertainty it was supposed to deal with.

- There is a need to remove political interference by Committees in factual recommendations made by rights of way officers.

Question 14. Do you have any suggestions on how a process might work, which would enable an appropriate diversion to be agreed and put into effect before the way is recorded and brought into use?

Total responses	201
Yes	118
No	32
Other substantive responses	51

The majority of respondents supported the Stakeholder Working Group proposals and many offered insights into how they could be implemented.

Many respondents suggest that there is no need for a new procedure. Section 119 of the Highways Act was already being used by some local authorities to support agreements with landowners for an unrecorded path, or extinguishment and creation orders (with a combined order or legal event modification order to add the changes to the definitive map and statement). This process allows the public to object and for those objections to be fully examined.

Some respondents questioned why the public's right to be consulted should be restricted and there was concern that proposal 7 (for there to be no right of objection) would be open to abuse. There would still need to be provision to protect the public's rights through the current public interest tests.

The key points made were as follows.

- There should be a single order approach, with a new provision to divert the claimed line to a new line and disposing of the old route for good. These orders could also function as legal event modification orders – so avoiding the need for any further orders.
- There is a need to ensure proper record of the agreements. A note on the statement would be needed making clear what was the original route claimed as well as recording the diversion, so as to prevent a later further claim for the original route. All probable rights on route should be diverted not just those that are claimed.
- A clear mechanism would need to be in place to ensure that the public status of the route was formally beyond question if it were to be capable of then being diverted before being formally recorded.
- If the landowner has agreed to the diversion as well as the claimed route, this could be reflected in the application and order process.
- Local Authorities should have a pre-defined set of rules to which any claimant or the land owner can work with, and if these are agreed then the diversion could be brought into immediate use.

- There would have to be extremely good justification put forward for diverting a route, and any historical significance for the line of the route would need to be fully taken into consideration. There should be set guidelines including: full consultation, maintaining the way's correct status, following the "as good or better" rule, and an assumption against including any extra obstructions such as gates.

- Downgrading of routes should not be allowed and the power should be subject to the public interest protections mentioned in the Stakeholder Working Group report.

- It is important to include applicants and users and Local Access Forums in discussions

- A local authority could agree unfavourable diversions with landowners unless user groups are fully involved. This is especially true in authorities where councillors make the decisions, and those with low budgets who just want to clear their desks.

- The main problem in the present system is the making of unreasonable objections. Widespread informal consultations undertaken before orders are made are essential to tease out issues, deter unreasonable objections and save on costs incurred in fighting disputed orders.

- A deterrent to unreasonable objections could be introduced through some sort of costs process.

- The proposal could be helpful in persuading landowners, who might otherwise be worried about agreements being thwarted by objections, to acknowledge the existence of a right of way.

- There is a need to evaluate schemes as a whole and avoid part of a scheme being confirmed in isolation.

- Routes need to fit with current land use and landowners' perspectives.

- There would be a need to avoid destroying any historical landscape features, or diverting routes onto land where it would have a negative effect on the nature conservation interest. Where previously undiscovered rights or way are discovered over level crossings then safety issues need to be considered.

- It is very rare for a proposal to be limited to a single occupier or an alternative not to run alongside a neighbouring boundary.

- Such agreements would need to be without prejudice to the rights of landowners or users to make assertions about the existence or otherwise of the rights of way or about status or limitations (such as gates or stiles).

- Public access considerations should overrule land use considerations

- Only those who own the land should have a right to ask for a diversion or to object to an upgrading.

- The need to ensure the protection of the public interest should not result in excessive additional periods of consultation and potential objection. Regulations and guidance which define the scope of any agreements would need to be tightly drawn to avoid this.

- Where a diversion impinges on an adjacent landowner then it may be necessary to pay compensation, the cost of which should be borne by the landowner who will receive the benefit. The process could follow the section 28 creation order regulations.

- Introduction of a new subsection to section 53 of the Wildlife and Countryside Act 1981 would eliminate the need for the tests laid out in s.119/118 of the 1980 Act.

- Provision for extinguishment of unrecorded rights (similar to the s118 HA 1980 process) may be useful particularly in circumstances where the historic width is not needed or feasible but a reduced width may be reasonable (for example from Inclosure Awards).

- More work needs to be done on the details of the mechanisms, perhaps through a working group, building on options worked up by the original Stakeholder Working Group.

- Landowners should be able to serve notice (for example 6 months) on a local authority, and vice versa, to record the way or for a diversion of it.

- There could be an issue with applicants using a landowner's engagement with this process as evidence that the landowner thinks the way is a right of way. This could prejudice the landowner's interests. A landowner should not be penalised for trying to work with other parties to resolve issues.

- One approach might be to combine magistrates court stopping up orders (under section116 of the Highways Act 1980) with concurrent creation orders or agreements. The court orders would have to stipulate that that they do not come into force until the necessary work on the new routes is completed and they are available to the public.

- There should be a presumption that any way over which there has not been twenty years use, for example because it has not physically existed, will meet the definition of "unnecessary" under section116 of the Highways Act 1980. Such cases should automatically go to the magistrates court, where it can be sorted locally and avoid the need to go to the Secretary of State. Similarly, if the landowner and highway authority can agree a route that is "more commodious" than the original one, then it too should automatically fall to the section116 procedure. This would save any rediscovered long lost way having to go before the Secretary of State.

- Why should the local authority be able to agree a diversion of a route before it is recorded (without having to submit opposed cases to the Secretary of State) and yet not be able to determine an application to divert an already recorded route that may have far less impact on public use and enjoyment? It would create an inconsistency with other existing provisions.

- Permissive paths could be used – though they are not necessarily a proper solution. The landowner could for example create a new permissive path and then apply for the diversion. The diversions orders could be temporary or experimental (similar to experimental traffic regulation orders) and then subject to review involving all stakeholders.

Question 15. What aspects of data management systems for recording public rights of way need to be tackled?

Total responses	163

Respondents picked up on a range of issues and made the following points.

Integration of records

- People need to be able to see rights of way in conjunction with other highways (e.g. minor roads and tracks not on the definitive map and statement) and cycle routes.
- Anomalies arise from differences in the current mapping and recording systems, for example a lack of detail on the original definitive map and statement when compared with other maps.
- There is a need to include a range of information relating to the rights of way including temporary diversions and closures, obstructions, dates of applications, decisions etc.
- In order to tackle this there should to be a consistent and co-ordinated approach by an overarching authority such as Defra or Natural England.
- There needs to be an incentive for authorities to invest in the initial data where they don't already have a system in place.
- It would be helpful for local authorities to publish a list of known definitive mapping anomalies that require resolution.
- BS7666 Pt.4 tries to integrate all highway recording in a geographical information system (GIS).
- There should be a single national register.

Making records accessible

- Electronic mapping is already provided by many local authorities. It is very helpful to the public and Defra should consider the amendment of the relevant legislation so that definitive maps and statements can be held in this way (and to clarify the formal status of such records). This would also improve access to multiple (definitive) maps where an order has resulted in updates to more than one. It could be made mandatory, with a deadline for all authorities to enter their definitive maps and statements into a GIS database.
- There should be free access to Land Registry information to identify land owners for making definitive map modification order applications.
- It should be possible, well before the cut off date, to be able to see, on a local authority's website, which rights of way will be preserved, for example through the definitive map and statement, list of streets and local street gazetteer routes.
- Some local authorities have a comprehensive online access system so the public can view the definitive map, obstruction reports, status of various orders, and closures etc. This provides excellent visibility of status and significantly reduces queries and errors.

- There should be an online list of all definitive map modification order applications that are on the register and under review.
- A copy of each confirmed order should be made available to the public – ideally by placing it on the Internet and as hard copy available at the surveying authority's premises.
- To ensure electronic access, the broadband speed will need to be improved across many areas of the country, especially in many rural areas.
- Paper records should be available for those unable to access them through the internet.

Backup and management of records

- The definitive map and statement should be fully backed up and archived on separate media and in separate locations.

- Version control should be applied to public records, for example a list of confirmed orders, with date of change, reason and identifier for the individual responsible etc. This should be visible to the public on the Internet.

- There should be a requirement to keep a list of confirmed orders (in same vein as list of streets) on a plan that is available electronically. This could be kept continuously updated. It should be possible replace the definitive map with a working copy, which is what most authorities now use.

- In order to make any further changes to the definitive map and statement, a copy of the master version should be taken and changes made to that.

- It should be possible to "upspec" definitive maps from the original survey scale to 1:2500 or 1:1250 without the need for a full consultation or re-issue of the order, although there should be an inspection period for the new map so that genuine errors can be identified.

Other comments

- The registers of definitive map modification order applications need to be made more consistent. Very few carry all the information required by the relevant regulations and many are difficult to access. Some surveying authorities do not even have such a register.

- Surveying authorities will need more resources for integration of records. The need is not just for systems but also for staff resources

- An effective and accurate GIS system with widths as well as lengths is required. A highway constitutes a tract of land with width and frontages and is not a line over land, which is how many local authorities choose to depict them.

- Consistent national standards would be great but given that there are almost as many current systems as there are local authorities, significant time and new resources would be needed to enable all authorities to adopt new systems.

Question 16. What are the key outcomes that need to be achieved in terms of data management systems?

Total responses	158

There was general agreement that the key outcomes were to have an integrated, consistent, accurate and accessible system, free to the end user, which includes public rights of way, other highway records, cycle ways, permissive paths etc. This would tie in with the Stakeholder Working Group proposal 30 and help achieve recognition of a larger interlinked network which meets contemporary needs – not just a separate rights of way network.

Some respondents made the point that, in line with open data measures contained in the Chancellor's 2011 autumn statement, all this data should be published as 'open data', i.e. without any restrictions on re-use (except for an attribution statement to acknowledge the source of the data).

Consideration would need to be given to how this information might be fed to Ordnance Survey and how it might link with other systems, such as the Land Registry.

There is widely held view that integration could be achieved by bringing existing elements together. For example, the list of streets should also be displayed in map form as a GIS layer accessible to the public from the same source as maps on public rights of way. Similarly, an integrated definitive map could contribute to a gazetteer of all public rights, including cycleways. This was expressed in the view that: "a common schema for a digital definitive map should be developed, with some common fields to link it to the National Street Gazetteer, to allow for a proper integration in the future."

Some responses hinted at a more nuanced approach, based on flexible and adaptable local administration of the definitive map and statement. It was also suggested that practitioners work together to determine the detail.

Some suggestions were more ambitious, for example they proposed a capability to provide evidence with reference to any right of way, including the right of way's history (when it was recorded on the definitive map and statement, if and when it was diverted, etc) and live details of claims, temporary closures etc.

There is widely recognised need to identify where the speed of updating records can be improved – time, for example the time it takes to process a legal event modification order and the time it takes to provide information to Ordnance Survey.

Other points made were as follows.

- Could the LGA, ADEPT and IPROW work together to develop and promote a standard system for use across all authorities?
- The system should enable the resolution of anomalies by simple cost-effective means – Local Authorities should be able to resolve some issues without needing an official order.
- There is no mechanism governing the addition of highways to the list of streets or their removal from it.

- The claims lists held by all authorities should be accessible, because this information is required when assessing how the routes identified in the exceptions can be dealt with against the existing work-load.

- Prospective purchasers/tenants of land should be able to obtain information about any rights of way affecting that land.

- Establishing national rights of way data standards would enable data to be compared across authorities. The British Standards Institute, Ordnance Survey and public rights of way professionals could work together to establish a new British Standard or to extend BS 7666.

Part 2 – Extending the Stakeholder Working Group proposals from definitive map modification orders to public path orders.

Question 17. Do you agree that the proposals identified in [Part 2] should be applied to the policy and legislation governing public path orders?

Total responses	192
Yes	147
No	7
Other substantive responses	38

On the whole there was strong support for applying most of the Stakeholder Working Group proposals to public path orders, but that certain proposals would not be appropriate.

Different elements of the proposals are covered individually below.

“The surveying authority should be allowed to discount summarily any irrelevant objections. It should be required to treat both these and representations made in support as registrations of interest in the outcome of the case” (SWG proposal 11).

Many respondents felt that it would be very hard to define “irrelevant” in the case of Public Path Orders – most representations are likely to concern the relative merits of the proposed route. One respondent asked whether order making authorities could deal with objections to rights of way orders in the same way as objections to planning applications are dealt with. One respondent asserted that it has always been possible for a local authority to discount irrelevant objections.

“Review of cases based on documentary evidence should normally be by means of written representations, but with the discretion to hold a hearing or inquiry if in all the circumstances it is likely to add value” (SWG proposal 13).

Many respondents suggested this would not really be appropriate in the case of public path orders as documentary evidence is rarely relevant, though some noted that documentary evidence may be presented.

The Secretary of State should be able to split a case such that only aspects that are objected to need be reviewed (SWG proposal 14).

There was some feeling that this would not be as useful or relevant for public path orders, because as the changes proposed are usually part of a package and splitting elements of the package is not likely to be helpful. However there may be not strong reason for preventing this, should it be useful in some circumstances.

Orders should be published in draft and there should be flexibility for surveying authorities to correct technical errors in them (SWG proposal 15).

There was support for allowing flexibility to easily correcting technical errors. A few respondents suggested that the corrections could be published in draft to suggest changes, and noted that some authorities already do this – resulting in considerable savings, including preventing objections. Another respondent suggested giving authorities powers to make minor amendments without having to submit them to the Secretary of State, rather than introducing a new process for publishing in draft. Another commented that if orders are to be published in draft, this should not add a third stage to the advertising process (currently advertised at both made and confirmed stages). Instead the process should be more similar to that for traffic regulation order s where an order is published in draft, triggering the formal objection period, then the order is made and advertised, triggering the high court challenge period.

Other comments and suggestions included the following.

- Public path orders should be made as easy as possible to resolve and at a neutral cost to the local authority.
- Inspectors should be given more scope to modify minor errors.
- The reforms should be extended to all orders – to harmonise the process for making orders under the Wildlife and Countryside Act 1981, Highways Act 1980 and Town & Country Planning Act 1990 – each of which, for example, currently have separate regulations involving different objection periods. There should be absolute consistency for all orders. The fact that these various orders follow slightly different processes can provide far too many pitfalls leading to technical errors in otherwise sound orders.
- The number of objections to an order could be reduced by requiring an authority to produce, at the time of publication of the notice of an order, a statement of its reasons for making that order and why it complies with the statutory tests.
- A public path order made under either the Highways Act 1980 or the Town and Country Planning Act 1990 that has been neither confirmed nor submitted to the Secretary of State for determination within one year of its making should lapse.
- Public path order cases could be screened by Local Access Forums prior to submission to surveying authorities.
- Where a creation agreement made under section 25 of the Highways Act 1980 is part of a package also involving public path extinguishment or diversion orders, there should be a requirement to consult the prescribed organisations. Also, the prescribed organisations should be notified when such an order takes effect.
- There should be no change to the process by which ordinary diversion proposals are put through the procedures set out in the Highways Act 1980, because these existing checks and balances function well in terms of protecting public rights of way and balancing the various interests involved.

As regards proposal 16 (that it should be the Secretary of State's decision rather than the original order that is quashed in the High Court) in these circumstances, the case should go back to a public hearing, the result of which should then be final.

Question 18. Do you think that more use could be made of electronic communications for public path orders, in similar ways to those suggested for definitive map modification orders in Question 5?

Total responses	200
Yes	183
No	4
Other substantive responses	13

There was overwhelming support for this idea, but many pointed out the dangers of relying on electronic communication for some aspects such as serving rights of way orders and referred back to their responses for question 5. Some people still prefer hard copies of documentation.

Other comments were as follows.

- Electronic communication is generally preferred by most parties for consultations, notices etc, with hard copies only being used when required.
- Reducing or eliminating the requirement to advertise in the press would further streamline the process and save money for applicants paying for their public path orders.
- Very few responses result from adverts in the press so this would not appear to be an effective way of advertising orders.
- Basic details should still be publicised in the local press. Legislation could be amended so that only minimal details are provided in local newspaper notices, with readers being referred to the local authority website where full details (including a plan) can easily be provided.
- It is essential that there continues to be a means of accessing the data through non electronic means. A short advert and a paper copy in one accessible place such as a District Council Office.
- It should also still be possible for anyone to visit council offices to view orders and plans in person.
- Notice of orders could be served on the prescribed bodies electronically provided that they have agreed to accept notice in that way.
- Orders to be advertised in local libraries and on town/parish notice boards to provide information for non-computer users.
- Plans and maps may be difficult for the public to provide to an exact scale electronically. In addition most authorities may not be in a position to comply with the British Standard for scanning in and storage of documents which may later be used in court.

Part 3 – An alternative approach to the "right to apply" for public path orders.

Question 19. Do you agree that enabling local authorities to recover their costs in full would incentivise them to pursue public path orders requested by landowners or managers?

Total responses	195
Yes	117
No	23
Other substantive responses	55

Most respondents answered yes, but although many were in favour of the principle of cost recovery, that did not necessarily mean they believed that cost recovery would incentivise authorities in the way proposed by the consultation document.

There was quite a lot of uncertainty surrounding the question. Many queried the evidence that there was a problem and the likely impacts, if the proposal were to be implemented. A lot depended on the resourcing situation faced by the local authority, and how it might deal with that. Several suggested cost recovery would not be a complete solution to the issue. There was some resistance to the right to apply principle given that there is no equivalent right proposed for parish or town councils or the public to apply for a creation or diversion in the public interest. There was also some opposition to cost recovery from private interests. A significant number of respondents did not believe that cost was the main issue.

Some respondents thought that change was unnecessary even where the local authority has a policy of only processing requests for diversions that are in the public interest.

It was pointed out that a problem for many rights of way teams within local authorities is that any income absorbed by the centre, so that even where it would be of benefit to the authority as a whole, it would nonetheless a drain on the rights of way service who would think it better not to undertake such diversion orders if possible. Some authorities felt that the recovery of costs would only remove some disincentives and that there are felt to be other factors, including the difficulty of resolving objections, that act as disincentives.

One authority observed that the public interest tests under sections118 and 119 (of the Highways Act 1980) have been known to lead to reluctance by authorities to make such orders. An alternative approach might be whereby an 'applicant' could agree to fund improvements elsewhere on the rights of way network (e.g. fencing, surfacing, drainage, vegetation clearance etc.) upon confirmation of the public path order, in a similar way to planning applications under section106 of the Town & Country Planning Act 1990.

Other points made included the following.

Cost recovery as an incentive.

- Unrecoverable costs associated with opposed public path orders can be a disincentive to order making authorities. The current system puts the authority at risk of unknown costs if objections ensue.

- Some authorities already recover their costs for public path orders, minimising opposition and costs by consulting widely at an early stage.

- Where someone makes a financial gain out of a rights of way change, then the cost of doing this should be met out of this gain. Local authorities should be able to charge in accordance with a tariff established at the start of the process. Perhaps there should be a cap on fees?

- The proposal would only work if the money was ring fenced to provide funding for staff to pursue public path orders.

- Some authorities refuse to make orders, these seem to political decisions rather than one based on cost based decision. Nonetheless, they seem content for a developer to obstruct a path.

- Recovering costs will not help authorities employ more staff to deal with the orders and therefore backlogs will not improve.

- Public path order requests are made irregularly and infrequently. The variable level of demand and consequently workloads would prove to be a very disincentive. In some cases there might be a risk of being swamped by increased requests.

- The proposal risks creating a two-tier system biased in favour of those who can afford to pay.

- In authorities where the required in-house expertise either doesn't exist, or has been lost, it would still be easier not to accept applications.

- Local authorities may prioritise public path orders over definitive map modification orders for budgetary reasons – this seems to happen already in some authorities.

- Local authorities should be able to contract out work to those better able to do it.

- It would be helpful to be able to recover costs for creation orders, where concurrent creation and extinguishment orders are made.

- With the applicant's consent, it should be possible to refer the matter to the Planning Inspectorate and recharge the costs. If the authority feels that either decision might serve the public interest equally well, it could take a neutral stance and allow the applicant to act as advocate, giving the applicant more control over the cost.

- There are a number of impediments to progressing requests for public path orders, apart from costs, which include: resistance to the principle of landowners being able to effect changes to the public's right of way, local user groups having disproportionate

influence, authority officers not wanting to defend opposed orders and a lack of expertise amongst potential applicants.

Public v. private interests

- It is important to keep a balance between private and public interest. There could be a presumption for increased public benefit in any application, for example additional rights of way, removal of obstructions on diverted or nearby rights of way.

- It is difficult to assess and balance public versus private interests. Where the order is clearly in the private interest there is a strong case for cost recovery from those interests, but often there will also be some public benefit to a diversion.

- The number of orders actually made each year under section 119 of the Highways Act 1980 ‘in the interests of landowners, lessees or occupiers’ vastly outweighs any made in the public interest.

- If it is to be not possible to recover costs for orders made in the public interest, there needs to be very clear guidance on when this applies.

- Is it fair to charge landowners and not users or other applicants? Cost recovery should be more fairly balanced between applicants and objectors, and cost consequences need to be clear.

- Applicants may argue that orders, which would otherwise be made in the landowner's interest, should be made in the public interest instead.

- There needs to flexibility to charge even where a public path order is in the public interest. Otherwise, there is a risk that authorities might choose not to take on applications that are in the public interest if they have no resources to fund them, even where there may be a landowner who is willing to pay.

Other comments

- Applicants could incur significant costs due where there are vexatious or unreasonable objections.

- The priorities and rationale for accepting and making public path orders should be drawn from the Rights of Way Improvement Plan.

- A statutory duty would be fairer than cost recovery.

- Local authorities should be required, within a fixed period, to provide a reasoned decision on whether or not to make an order.

- Grounds for refusal should be made available on request.

- The public interest tests must be retained.

- Public Path Order processes are longwinded and can be expensive. The use of magistrates court orders instead under section 116 of the Highways Act 1980 is to be recommended, with full costs being recovered outside of the constraints of section 117 of the Highways Act 1980. However there is a need to reduce the veto of parish councils to the use of section 116 of the Highways Act 1980 and replace it with a

written letter of objection from the parish or personal court attendance to ensure the matter is dealt with as a contested application.

- If landowners are not to have the right to apply, but would be required to pay for any order to be processed, the relevant sections of the Highways Act 1980 should be amended to make it a duty as opposed to a power for the local authority to make an order where the relevant statutory criteria under those sections are satisfied.

- Enabling full cost recovery for refused applications would establish a better income base to fund the processing of applications and would potentially allow the overall costs of an application to be reduced because of the elimination of lost income on refused applications. It would be helpful to have the ability to charge for pre-application advice and to recover the full administration costs where an order is not made.

Question 20. Would local authorities be incentivised sufficiently to enable retention of a right of appeal to the Secretary of State without the risk of local authorities shifting the burden and cost of order-making onto the Secretary of State?

Total responses	**179**
Yes	45
No	21
Other substantive responses	**113**

There was some uncertainty over this question. As with the previous question there was no clear overall message about the likely impact of the proposal, with much depending on the capacity and approach of the local authority in question. There was some scepticism whether full cost recovery would avoid authorities shifting the burden and cost of order-making onto the Secretary of State, although some felt that local authorities would be incentivised if the level of recharging were sufficiently high.

The key points made were as follows.

- Does it matter whether the Secretary of State or the authority make the order, as both are public resource?
- Having the Secretary of State decide a case on appeal is contrary to the principle of localism.
- Responsible authorities should act no differently.
- If there is a problem here, it is unlikely to be addressed by incentives.
- It could be less costly overall to have fewer staff in authorities to deal with the applications and let the Secretary of State carry some, possibly the greater part, of the burden.
- There must be a degree of trust in the integrity and professionalism of authority staff not to manipulate the system but deal with cases in a straightforward way
- Authorities should retain a democratic right to refuse to make orders which they believe to be not in the public interest
- There should not be a system that allows appeal against refusal – the whole basis of the powers for rights of way diversions is that authorities decide on the merits using their reasonable discretion.
- Prioritisation will, and should, be driven primarily by the authority's requirement to undertake that work which gives the greatest public benefit.
- The cost of appeals should not be passed back to the applicant, who has no control over whether the case goes to appeal. The cost of the process would be a barrier to the landowner defending the application.

- Order making by the Secretary of State should be charged to the authority. The solution is to make authorities pay a referral fee to the Secretary of State where they have failed to resolve a case themselves. The fee could be returned if Secretary of State finds in favour of the authority.

- If the measures proposed are introduced, along with the ability to recover costs in full, it seems likely that most authorities will be far more inclined to process applications themselves and retain control over the process.

- Where authorities lack the necessary in-house expertise it may still be seen as easier to ‘pass the buck’ to the Secretary of State, than to deal with or outsource applications themselves.

- For authorities that receive a large number of applications it may still be that the small diversions that offer little or no public benefit, but do meet the relevant legal tests, are not seen as a good use of officer time and these could still be refused, with applicants having recourse to the Secretary of State instead.

- Many authorities have lengthy waiting lists and it may be that, even where applications are accepted, applicants will prefer cases to go to the Secretary of State, rather than wait in a queue to be dealt with by their local authority.

- It would be advantageous for processes to be amended so that local issues (which right of way cases often are) could be considered on a parish level, rather than through referral to Secretary of State. For example a diversion proposal could be considered by a formal parish/town meeting.

- If the applicant outsources the public path order work the authority would not be able to shift the burden and cost of order making to the Secretary of State.

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Question 21. Should the proposed arrangements apply to all public path orders and not just to land used for agriculture, forestry, or the keeping of horses?

Total responses	198
Yes	161
No	12
Other substantive responses	25

A large majority of respondents were in favour of this, saying that the process should be available for all landowners. It would be more equitable in terms of having a right to apply and a duty to cover those costs. Several suggested it would only be practicable if a local authority were able to recover its full costs. Some respondents noted a potential to create a significantly greater workload for local authorities and for the Secretary of State were the provision to apply to all land; it would include many difficult applications including diversions involving private gardens). One respondent suggested that broadening the category of land use may best be left for a future occasion when the impact of the other reforms can be properly assessed.

The Ministry of Defence suggested the provision could be extended to land for "the purposes of defence or national security as in section 28 CROW Act 2000" which would enable the Ministry of Defence to pursue diversions in a more open and transparent manner than that allowed by the current legislation – the Land Powers (Defence) Act 1958.

It was also suggested that the rights of application and appeal should also apply to rights of way over railway land, where not already covered by rail crossing diversion or extinguishment orders.

One respondent suggested it should also apply to landowners who want diversions to paths not on their land, but in the vicinity, for reasons of privacy or security.

Some respondents were against differential charging – though one respondent also noted that a lower charge for "public interest" orders could encourage parish councils to take the lead in working with landowners, etc. to adjust paths to be more aligned to current needs.

Some perceived a risk to public rights of way – one commenting that no public right of way would be safe – only the application fee would deter applications, and could lead to an influx of applications and work for the authority. It seems to shift emphasis away from definitive map modification order cases, and away from ensuring the public rights of way are kept open and clear, and well recorded.

One respondent suggested that the definition of public path orders should be widened to include other highway orders, for example Gating Orders under sections 129A-G Highways Act 1980.

Parish and town councils could find it very difficult to find the money needed to apply for a public path order, therefore the safeguard outlined in bullet point 6 of paragraph 35 (an explicit requirement for local authorities to waive the costs of a public path order that is in the public interest) is crucial.

Question 22. How could it be made clear what charges are levied for each stage of the public path order-making process and that the charges reflect the costs actually incurred?

Total responses	159

There was widespread agreement that any charging would need to be fair and transparent. Some respondents felt strongly that there should not be full cost recovery, but that costs should be capped, for example at £1,000. This would help deal with the risk that people could object to an application in order to increase the costs to the applicant and the likelihood of them having to abandon the application.

There was some support for the suggestion that charging should be linked to an agreed service standard including timescales and appropriate charges for each stage. It would need to be made clear that payments are being made in order for the application to be assessed – with no guarantee of a successful outcome. Applicants could have the flexibility to pay for separate stages and have the option not to proceed at any stage in the process – consultation between the authority and the applicant could play an important role.

Many respondents made suggestions on how charges would be published and how the level of charges would be managed. These included the following.

A scale of charges

- Local authorities could publish a clear schedule of charges broken down by each stage of the process. This could be part of the application form that is signed up to at the beginning of the process to ensure that charges are clearly understood and agreed to. There is an existing model in the building control charging regime to develop full transparency of costs.

The level of charges

- This should be at the discretion of each authority, rather than centrally imposed, so it can reflect the actual costs to that authority. However, perhaps an upper limit, or guide price could be set centrally.
- There should be a national framework for costs to prevent different charges between different authorities.
- With electronic communication and a reduction in newspaper advertising, Government should be clear it expects costs to reduce. The Government should scrutinise charges and be empowered to cap costs.
- The charges should be subject to a test of reasonableness
- Some charges would have to be variable, with some on a 'per hour' basis.
- It would be difficult to link charges with business benefits as these are intangible and hard to quantify.

Compensation

- One respondent noted provision in the Highways Act 1980 for compensation to anyone who can show that their interest in the land has been depreciated or who has suffered damage as a result of the order. A diversion order could also increase the value of the land so there should be scope for apportioning costs/compensation appropriately.

- It would be better for an authority to be able to remain neutral where a case is submitted to the Secretary of State and for there to be a requirement on the applicant to prepare and present their case themselves with minimal authority input.

Question 23. Do you think that landowners should have the option of outsourcing some of the work once a public path order is made in order to have more control over the costs?

Total responses	191
Yes	90
No	43
Other substantive responses	58

There was some support for this proposal, but quite a range of responses – including conflicting views from respondents within the same sector. The question was based on a scenario where once a local authority had made an order an applicant could have the option to engage an agent to progress the order, negotiate with any objectors to overcome their concerns and represent them at public inquiry if necessary. Some respondents interpreted the question differently, taking it to refer to the physical work of establishing the new route.

Comments on outsourcing progression of the order including the following.

- Outsourcing of the whole process should be an option – some local authorities have already trialled this.
- The most obvious stage to be outsourced would be the handling of any public inquiry, hearing or exchange of written representations by the applicant's own legal advisor.
- If landowners/managers are paying the costs, they should have the option of managing the process. In the absence of such an option, the landowner will have to pay the costs but have no control over how the application is pursued and this is likely to cause significant conflict.
- This can be the most time consuming and expensive part of the process for the authority in the event that there are objections and so the proposal may have merit.
- It would be better to give applicants the option of requesting that the authority to outsource the work before any decision is made to proceed with an order.
- It needs to be clear, perhaps prescribed by regulation what type of work landowners could outsource, as well as perhaps a budgetary ceiling.
- Agreed, providing costs are met by the landowner.
- The decision making process should not be outsourced as it could result in a lack of consistency.
- It may be difficult for an authority to be sure that all the necessary procedures had correctly been carried out.
- Some applicants already use agents to deal with applications for them, so it could be that a formal ability to 'hand-over' objector negotiation to an agent or other representative would assist some applicants and help authorities to pursue contested

orders that may otherwise be abandoned. It could also save the local authority those costs that are currently unrecoverable by them.

- Legal process work should not be outsourced for example drafting and publishing reports, orders and notices.
- The administration of public inquiries or hearings should not be outsourced.
- Individual authorities should have the option of formulating their own policy in respect of out-sourcing
- Applicants should also have the option of outsourcing the pre-order making work leaving the order-making authority with the decision making part of the process.
- The proposal would undermine confidence in the process amongst user groups.
- It is unlikely that the costs of out-sourcing will be lower than the costs currently paid by the landowner to the authority.
- Past experience of work being undertaken by agents on behalf of landowners is that it involves more work for the authority and cost that cannot be recovered.
- Management of rights of way is the responsibility of the local authority – changing this is beyond the scope of the consultation.

Comments on outsourcing of the physical work of establishing the new route

- This is already done in some cases.
- Providing that works are to a standard specified by the authority, it could help speed up the process and better integrate with land management. Quality, future maintenance and safety could be problematic.
- Often a landowner will carry out work on the route itself. Where this is a result of an order under section 257 [of the Town & Country Planning Act 1990] an inspection by the authority is required to certify the works and that the route is appropriate for use, after which the diversion comes into effect. It would be helpful if orders under section 119 [of the Highways Act 1980] included this provision
- Any remedial work needed where the contractor fails in their duties should be chargeable to the landowner.

Question 24. Might this (i.e. full cost recovery for public path orders) have an impact on other aspects of rights of way work?

Total responses	181
Yes	113
No	12
Other substantive responses	56

The vast majority of respondents answered yes to this question, but put forward a range of potential positive and negative impacts.

Potential positive impacts were as follows.

- It may enable local authorities to employ or retain specialist staff that can add to the skill-base in that authority.
- Being able to use public path orders as a tool to resolve issues on the right of way network could have a positive impact on enforcement and improve working relationships with landowners.
- The recovery of full costs could mean that surveying authorities have more to spend on other rights of way work, such as maintenance or processing definitive map modification orders.

Potential negative impacts were as follows

- Statutory definitive map modification order work in the public interest could become a lower priority, for example where public path order and definitive map modification order work is undertaken by the same person(s). This could negate the benefits realised from the other rights of way reforms.
- The expectation may be that public path orders are dealt with in short timeframes. If the processing of public path orders is given high priority, then other rights of way work will necessarily be given a lower priority.
- Full cost recovery could have a negative impact on orders made in the interest of the public, for example those that would create useful links or to fulfil aspirations set out in Rights of Way Improvement Plans. Such orders might be marginalised or given a much lower priority because of their net cost to the public purse when compared to orders for which landowners are prepared to pay.
- Local authorities might reduce the amount of funding available to rights of way departments to offset the income.
- An increase in public path orders will mean more work to update definitive maps.
- An increase in public path orders would mean Ordnance Survey maps would more quickly become out of date.

- There will be a substantial impact on prescribed bodies in responding to such orders, and potentially on voluntary organisations who monitor and respond on behalf of the public – cost recovery could be extended to these costs.

- Outsourcing rights of way work could blur the lines of responsibility and make management more difficult.

Other comments included the following

- There should be a framework to limit the impact – for example a public statement of priorities.

- Some respondents thought that the proposal would not cause local authorities to act any differently.

- One respondent commented that authorities should already be recovering their full costs under the current arrangements.

- Cost recovery could make it easier to consider outsourcing as an option, avoiding the need to retain staff.

- One authority reported that it is already finding that landowners are now either paying to process a diversion or deciding it is too expensive and ensuring the right of way is open and available for use on correct line.

Question 25. Are there any alternative mechanisms [to full cost recovery for public path orders] that should be considered?

Total responses	159
Yes	36
No	28
Other substantive responses	95

There were a wide range of responses to this question and a number of sometimes conflicting suggestions. Many said that new arrangements should be monitored and reviewed after a period.

Suggestions included the following.

- There should be a cap on costs to the applicant, for example of £1,000.
- The cost of maintenance of the diverted right of way could also be worked into the agreement, or the applicant could take responsibility for maintenance.
- The current system already allows partial cost recovery and works satisfactorily.
- Costs should be rebated where there would be an improved outcome for the public.
- The right to apply should be implemented with penalties to local authorities for non-compliance. The right should be extended to all landowners.
- The right to appeal should be available after 6 months if no decision has been made.
- Applicants should be able to apply directly to the Magistrates Court for diversion or extinguishment by amendment of section 116 (of the Highways Act 1980). Alternatively this course of action could be open where a local authority refuses or fails to deal with the application within a set period, for example 12 months.
- Magistrates Courts should not be involved in changing rights of way and section 116 (of the Highways Act 1980) should be repealed, with sections 118 and 119 being extended so that they are applicable to all classes of highway except trunk and special roads.
- With full cost-recovery, section 116 of the Highways Act 1980 could be repealed because currently some authorities make use of this provision to recover costs for non-vehicular rights of way despite Defra guidance to the contrary.
- An alternative might be for local authorities to set their own fees which could, for instance, be up to 10% above the costs they incur.
- The legislation should be left as it is; the right to apply provisions in the Countryside and Rights of Way Act 2000 should be repealed and guidance should be issued to authorities on the importance of dealing with landowner applications.

- The Secretary of State could recover costs from local authorities. If these costs were not passed on to applicants there would be a strong incentive to local authorities to process applications.

- The applicant could undertake more of the research and informal consultation according to agreed guidelines and templates. In some cases authorities already adopt this approach more formally to save central costs and offer more certainty and control to applicants.

- Much rights of way work is engaged in ensuring that landowners comply with their statutory duties, and a compromise would be a duty to process applications only from landowners who have good record of compliance with these duties.

- Require information about public rights of way legislation to be provided with property searches, so that people moving to an area are aware of the rules and procedures, this would reduce the amount of enforcement work placed on the local authority.

- Only orders where an agreed public benefit has been established though consultation should be processed.

- There should be a simple process for dealing with non-contentious minor diversions needed by landowners with the agreement of local consultees, such as parish councils and the local Ramblers footpath officer.

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Part 4 – The Penfold Review of Non-Planning Consents.

Question 26. Under Option A, how do you think wider adherence to existing guidance might be achieved?

Total responses	151

There was strong criticism of option A for the reasons that: it is not a viable way forward, it does not reflect the ambitions of the Penfold review and stronger promotion of guidance would not resolve the conflicts between the planning system and changes to rights of way.

Many respondents identified as a key issue a lack of awareness by planning authorities and developers of rights of way as a material consideration in planning applications. This can be exacerbated when there is high staff turnover, a focus on targets for processing applications quickly, and a general lack of training and understanding. Solutions proposed covered: strengthening this requirement, improving collaboration between highways and planning authorities, and raising awareness.

It was noted that unitary authorities are generally more mindful of public rights of way matters when considering planning applications than authorities where there is a division of planning and rights of way responsibilities between the two tiers.

One highway authority comment reflected a widely held view that: “if you can find a way to make sure public rights of way can be identified and dealt with at an early stage you probably don't need any of the measures you have set out in this consultation.” And that: “there is no integrated guidance. Planners do not normally consider public rights of way of significant importance to affect planning decisions”.

A number of suggestions were made about ways in which the requirement to consider rights of way could be strengthened, including the following.

- Make it a requirement for any planning application involving rights of way to have early consultation with prescribed bodies.
- Introduce a mandatory condition requiring a public path order be applied for before any work commences that would affect a public right of way.
- Introduce a requirement for planning applicants to include details of proposed changes to public rights of way in the form of an impact assessment.
- Add public rights of way to the planning validation criteria.
- Introduce a requirement for a standard letter or email to the applicant at the validation stage, drawing attention to guidance. Although a potential problem is that not all public rights of way are identified at validation stage and may only be recognised at site visit stage.
- Make a rights of way search mandatory whenever land is sold.

- Levy charges, fines or fees if the guidance is not adhered to.
- As part of these measures, planning application forms could ask whether there is a public right of way shown on the definitive map and statement which is within or adjacent to the site proposed for development, or whether there is on the authority's register of applications for definitive map modification orders an application to have a public right of way shown over land which is within or adjacent to the site proposed for development.
- Such measures could include amendment of the General Development Procedure Order 1995 and the General Permitted Development Order 1995.

A number of suggestions were made about ways in which collaboration between authorities might be improved, these included the following (although it was generally recognised that the problem lay with planning authorities rather than highway authorities or rights of way teams).

- Introduce closer working between planning and rights of way officers, for example public rights of way officers making themselves available to advise planning officers and applicants.
- Modify the requirement to share the definitive map and statement with other local councils to include the GIS record.

The following suggestions were made about raising awareness

- Better and wider publication of existing (Defra) guidance is needed.
- Local Access Forums could have a role in encouraging local authority compliance. In most districts there is a Local Access Forum or Rights of Way Users' Group. They should be advised of any planning application involving rights of way and asked for their input.
- The RTPI and RICS could include more on public rights of way in their training programmes.
- Planning authority websites should contain relevant information on public rights of way, of the procedures that need to be carried out and details of contacts within highway authorities. The Planning Portal should also be improved in this way.
- The current localism agenda could be used more effectively. District councils and developers often see public rights of way as a problem, rather than a positive resource, which could be capitalised on as sustainable green links for cycles, pedestrians and horses
- Ensure all public rights of way are recorded by the Land Registry

Question 27. What do you think would be the best option to minimise the cost and delay to developers while safeguarding the public interest on public rights of way?

Total responses	177
In favour of A	10
In favour of B	16
In favour of C	68
In favour of A/B	0
In favour of A/C	6
In favour of B/C	7
Other substantive responses	70

Option A

There was very little support for option A.

Option B

There was significant support for this option; some respondents noting that it could speed up processes and also would give developers flexibility. Some suggested this would work best where planning and rights of way work are both undertaken by the same authority. It was suggested that advertising the planning application should include the public rights of way element rather than being done separately.

However, some respondents thought that the rights of way process could still delay development. In addition, negotiations on the planning application could result in changes to the rights of way order, involving more cost and delay. Some respondents felt that the certification stage should nonetheless come later, so that developers are not able to profit from the development until the work is completed in line with approvals.

A few respondents suggested that option B was in effect already possible under current arrangements. Although authorities cannot **make** a rights of way order before planning consent is granted, developers can **apply** for an order at an earlier stage, in order to allow rights of way issues to be considered in tandem. However, the main issue is the developer failing to make a prompt application.

It was suggested that implementation of option B would enable an assessment of the need for more radical reform such as Option C.

Option C

There was a lot of support for establishing an integrated process as the best way forward. It was suggested that it should be clear to the applicant that they must consult the rights of

way section of the authority in order to prepare the required plan and that failure to do so could result in the application being invalid.

Some respondents argued that there would still be a significant challenge in ensuring planning and highways authorities worked together. The terminology should be handled carefully – “order” should be retained in place of “rights of way consent” or “draft agreement”.

A large number of respondents stressed that certain safeguards needed to remain in place, not least to protect the public interest. These included:

- ensuring that developers adhere to commitments (by means of certification);
- avoiding badly made orders that later require costly amendment;
- implementing the rights of way changes only if the development is implemented;
- preserving the right of objection to the rights of way element;
- ensuring better co-operation between planning and highway authorities where these are separate; it was suggested that rights of way officers should be statutory consultees.

There were some who argued that it would be necessary to remove the right for objections to the right of way proposal to be heard at inquiry, because as a material planning consideration it should already have been considered in the determination of the planning application. It might still be necessary to have a third party right of appeal into the rights of way issue under certain circumstances.

Some felt that there should still be provision for highway authorities to process public path orders on behalf of local planning authorities – because in some cases this is working very well.

Some respondents suggested that Option C could actually delay planning decisions by incorporating rights of way into the same process. This could be particularly so where a right of way only affects a small part of the site as they would have to follow the whole process (including the high court challenge period). Others suggested this would only work if there are provisions to ensure that the determination of planning applications would not be delayed by an objection to the public rights of way element, by using the same process as objections to planning applications.

Some respondents noted that the proposed approach does not appear to take into account rights of way that are subject to applications that have not yet been determined, which could prove to be lengthier and have a higher risk of objection.

One respondent suggested that option C would require the measures in Defra’s rights of way circular to be incorporated into the Town & Country Planning legislation so that consideration of rights of way becomes an integral part of the process. There should be a single application and a single consent (or refusal).

A number of respondents suggested alternative options or modifications – in some cases a mixture of B and C. A few argued that none of the options A B or C really addressed the issues raised by the Penfold review or the main problem that where a rights of way objection is received the timescale is long and the outcome uncertain. Local authority capacity and prioritisation were of crucial importance. None of the options would improve the process; this will only be achieved by authorities giving a higher priority to dealing with public rights of way issues and taking them seriously.

Other views and suggestions were as follows.

- In some circumstances it may be appropriate to extend the rights of way network around larger developments, for example as part of green infrastructure or in order to secure the fullest possible use of walking and cycling, which is a core planning principle. Option C would help ensure such opportunities could be considered early on.
- Issues such as landscaping schemes would need to be considered earlier in the process under this option.
- The highway authority should have the ability to impose conditions in respect of the rights of way aspects.
- Speeding up the process could just result in more costly and time consuming delays later on.
- There could be an important opportunity for “planning gain”. All routes, including bridges and access to bridges, which may be dedicated as part of the planning and development process and application, could be designed and built to bridleway or restricted byway status.
- The prescribed rights of way organisations (and the prescribed locals) should be given notice of any application that affects a public right of way.
- There should be provision for a conditional stopping up or diversion order, where the highway authority issues an order that is conditional on the developer completing and dedicating new rights of way along with any other conditions the local highway authority may see fit, for example a time limit. This would incentivise the developer to work with the planning and highway authorities to find an acceptable solution. Applied to all types of public highway, it would save having separate procedures for sections 247 and 257 [of the Town & Country Planning Act 1990]. It would also support the localism agenda and remove the need for most cases to go to the Secretary of State for determination. The Secretary of State would only deal with cases where the developer had not managed to address the issues to the satisfaction of the highway authority.
- More openness and transparency is required, including early discussion and negotiation with interested parties. Including Local Access Forums could help in to speed up resolution of cases. Much of the delay arises from suspicion of underhand dealings.
- Rights of way should not be viewed by the developers as a problem but rather as an opportunity to do something positive about the rights of way that cross a site and to seek to enhance the development and the overall network. Section 106 agreements could have a positive role to play in offsetting losses in access.

- There is a need to ensure rights of way are protected from permitted development. The confirmation of any order should only occur once planning permission was given.
- Rights of way orders should still be made by trained definitive map officers and not planners.
- Any permanent paths created during the Planning process – for example under Section 106 Town and Country Planning Act 1990 – should be recorded on the definitive map and statement so that users know they exist and who is responsible for their maintenance.

Question 28. Are there other options that should be considered [to minimise the cost and delay to developers while safeguarding the public interest on public rights of way]?

Total responses	158
Yes	60
No	30
Other substantive response	68

A large number of respondents felt that other options should also be considered. But the options proposed were largely based on, or incorporated elements of, the options outlined in the consultation.

Respondents made the following points.

- Reform is needed to improve the processes in terms of localism and deregulation, as well as to meet the specific recommendations of the Penfold review.
- Costs should be recovered from the developers and could be recovered from a range of applicants as with planning applications.
- As the processes represent a cost to developers, they should be able to choose when the rights of way issue is considered.
- There should be further devolution of powers to local authorities in order to achieve consistency and a “one stop shop” approach. However local planning authorities may not have the expertise to determine rights of way issues.
- The less cumbersome the system, the better. It needs to be understood by all. Anonymity should not be encouraged; if someone has a problem they should be asked to declare it openly. This would help to defuse some of the problems experienced in the current system.
- More use should be made of section 116 of the Highways Act 1980.
- It seems anomalous that Magistrates Courts [and Parish Councils] deal with carriage roads and byways – they are not specialists and as a result this process can be costly and unpredictable.
- There should be a common objections process.
- Objections should be subject to qualifying criteria.
- The key is to ensure that rights of way are treated as material to planning.
- The public interest aspect of the right of way should be considered as early in the process as possible.
- The major delay in a number of scenarios is not the system but the failure to note, consider or adequately deal with rights of way issues at an early stage, including engagement with the local highway authority and rights of way team. It should be

possible to allow the rights of way process to start in advance of the planning permission,

- Screening by, and advice from, Local Access Forums as part of preliminary consultations would help to eliminate delays later in the process.

- A mechanism is needed to prevent the path order coming into effect if the development is not completed. It is often difficult to achieve compliance once a development has commenced. There would also need to be a mechanism to ensure that the final development plans are in line with the rights of way decision.

- Having a completed definitive map would be a good start - the developers would then be able to work around rights of way as they currently do with physical features on the ground, for example: water, roads etc.

- The proposals need to take into account any applications to record public rights of way that have been made but are yet to be processed. Developers may not be aware that such applications are possible.

- Examining the definitive map modification order register and processing any existing applications as part of the planning negotiations, would help to save more expensive and contentious situations later.

- New legislation must provide for better enforcement against non-compliance

- There is no statutory requirement to notify prescribed organisations of orders and draft orders under the Town and Country Planning Act 1990 and whatever option is introduced, such notification should be mandatory.

- Too often developers try to keep their intentions secret, which creates suspicion and hostility. Although there may be commercial reasons for not disclosing plans, the sooner they disclose their proposals to the public and explain the reasons the better their chances of resolving objections.

- Developers should be required to discuss issues with authorities and statutory consultees well in advance of the date when the local authority is obliged to determine the application.

- Provision should be made for retrospective applications for diversions where a local authority has failed to carry out the correct procedures beforehand.

- Planning qualifications should include understanding of how to make a Town and Country Planning Act 1990 order for a right of way.

- There are benefits in clarifying the temporary closures necessary to facilitate development. Existing provisions within the Road Traffic Regulation Act 1984 should be amended to provide for longer duration temporary closures in the event of development where six months is often entirely inadequate (development on larger sites often taking years).

- The focus should be on delivering high quality walking and cycling routes (particularly but not exclusively) that will serve the community. There is a need to simplify and get back in touch with and deliver what the wider public actually require and want.

- The local planning authority should be empowered to consider and make decisions on rights of way without referral to the Secretary of State.

- The planning authority should be able to make a single order to consent to development and to alter the public right of way network. Upon confirmation of the order the development consent is granted and the paths are moved. This would require a changes to the current arrangements under which members of the public cannot object to the granting of development consent.

- Devolve certain powers in the Town and Country Planning Act from the Secretary of State to the local authority, in particular, sections 247, 248, 251 and 252. This would bring powers into line with section 257 and other public path orders.

- It may be necessary to retain the option to refer cases to the Secretary of State where a highway crosses more than one administrative area.

- There is a need to ensure that any changes made to section 247 and 257 of the Town & Country Planning Act 1990 maintain consistency between the two provisions.

Question 29. Do you think that enabling a single application form to be submitted through the Planning Portal would improve the process?

Total responses	179
Yes	110
No	19
Other substantive response	50

A majority of respondents were in favour of the proposal in principle, but many were unsure or not convinced of the merits. There was significant support for a combined planning and rights of way process, and for a single application form as part of an improved, integrated process, which would include better communication between planning and highway authorities. This was to make applicants aware of rights of way issues and ensure that there would be no way of avoiding going through the proper procedures for rights of way diversions.

Points made by respondents were as follows.

- It should be recognised that not everyone is aware of or will have access to the portal; the option to submit paper applications should be retained.
- In 2011/12 the proportion of planning applications submitted online via the Planning Portal was around 60%, the significant number of applications still submitted in paper form needs to be taken into account.
- A single, centralised form should, in theory, be simpler for applicants, but such a form could require a lot of information and could be quite lengthy.
- Local planning authorities currently produce different application forms for different types of development. All planning application forms should include, or be accompanied by, as much information as necessary about rights of way, their importance, what is required and how to go about getting the necessary consents and orders.
- There would be a potential difficulty where planning and rights of way authorities are different.
- The ability for the planning authority to make diversion orders should be withdrawn, unless they are also the local highway authority.
- This should not be necessary if planning applications properly consider any rights of way aspects.
- Clear national guidance is more important.
- The quality of the information given to applicants at the initial stage is crucial; there is a danger that the single application could lead some applicants to believe that they had met their obligations in respect of public rights of way. This is a problem now; with some developers thinking that mentioning a possible diversion of a path in a planning application is all that they need to do.

- Planners currently do not consider safeguarding of public access rights to be within their remit - these needs to change.
- A single application form to be submitted through the Planning Portal would require the backing of a pre-order consultation with statutory and other usual consultees. This will ensure that safeguarding highway use is considered from the outset.
- The outcome of the Department for Transport consultation could have a very direct bearing on the proposals outlined in Part 4 of this consultation.

Other points made in responses that are not related to the questions set out in the consultation document

Some respondents made various comments that were not directly related to the questions in the consultation document. For completeness, these are set out below.

- Government should consider automatic traffic regulation orders suspending actual or potential motor vehicle rights (except for access) on byways open to all traffic and unsealed ways on the list of streets in National Parks and Areas of Outstanding Natural Beauty. Alternatively a process could be established by which parish councils could apply to the highway authority or National Park authority for a traffic regulation order, with the opportunity to appeal to the Planning Inspectorate if the application was rejected. A further alternative might be to remove the exemption from extinguishment of motor vehicle rights in section 67(2)(b) of the Natural Environment and Rural Communities Act 2006, so that motor vehicle rights over green lanes that are not part of the "ordinary road network" would be extinguished.

- For diversions, the requirement to certify the works under s119(3) will still be required and the wording of the order, as set out in SI/1993/11, should clearly come into effect upon that certification, and not after a set number of days.

- The Public Path Orders Regulations 1993 (SI 993 No 11) require amendment to reflect the changes introduced by the Countryside and Rights of Way Act 2000 in relation to the certification of diversion orders where works are required.

- Section 25 [Highways Act 1980] creation agreements, as well as section 26 creation orders, could be linked to extinguishment orders where a diversion is not possible.

- The regulations governing the making of public path orders (Town and Country Planning (Public Path Orders) Regulations 1993 SI 1993 No 10; Public Path Orders Regulations 1993 SI 1993 No 11; etc) need consolidating and revising. In particular, the regulations for orders made under the Town and Country Planning Act should be amended so that the model form for diversion orders is printed separately from the model form for stopping-up orders. This should help to ensure that diversion orders are drafted so as to come into operation only when the order-making authority has certified that the new route has been satisfactorily created.

- Notices or signs indicating that rights of way have been legally diverted or closed should be required to be in position for a minimum of five years after Ordnance Survey have published maps showing the change.

- Repeal the provisions (sections 118B and 119B of the Highways Act 1980) which allow for the closure and diversion of paths for crime prevention reasons. Authorities do not make use of these sections now that they can make use of gating orders.

- The power given to district councils to make extinguishment and diversion orders under the Highways Act 1980 should be repealed. There is no obvious reason why they should hold this power. Changes to the highways network should be the prerogative of the highway authority which can take a strategic overview of the network.

- There is an issue of shared use between motorised and non motorised traffic (including pedestrians and horses) on parts of the highway network. He most dangerous are in rural areas where narrow country roads without footways must be used as links between public rights of way and where speed and traffic flows have increased markedly over recent years. Joint working between Defra and DfT is needed, as well as between departments within individual authorities.

- ‘Unclassified county roads (‘UCRs’) and ‘non-classified highways’ (‘NCHs’), form an integral and vital part of the rights of way network. Adding these to definitive maps by way of individual definitive map modification orders would be an enormous, time-consuming and expensive task. Subject to specified exceptions similar to those set out in the Natural Environment and Rural Communities Act, an unsealed route recognised as a UCR or NHC, less than 2 metres wide at any point should become a bridleway, and that an unsealed way over 2 metres wide throughout should become a restricted byway.

- Making changes to public rights of way should be an area that can benefit from the (new) Community Infrastructure Levy.

List of organisations that responded to the consultation

ADEPT Rights of Way Managers' Working Group
Agricultural Law Association
Amey
Auckley Parish Council
Aztek International Freight Ltd
Bath & North East Somerset Council
Billericay Town Council
Birmingham City Council
Bodmin Town Council
Boston Spa Parish Council
Bradford Metropolitan District Council
BRAG - Bridleways and Riders Action Group
Brighton and Hove Local Access Forum
Bristol City Council
British Association for Shooting and Conservation
British Horse Society
British Horse Society - local rep
British Horse Society - York Region
Chiltern society (rights of way group)
Church Fenton Parish Council
City of York Council
Co Durham Local Access Forum
Cornwall Countryside Access Forum
Cornwall County Council
Country Land and Business Association
Countryside Alliance
Cumbria County Council
Cyclists Touring Club
Dartmoor National Park Authority
Derby and Derbyshire Local Access Forum
Derbyshire County Council
Devon Countryside Access Forum
Devon County council
Doncaster Metropolitan Borough Council
Dorset Access Local Forum.
Dorset County Council
Dudley MBC
Durham County Council
East Midlands Trail Riders Forum
East Riding of Yorkshire & Kingston Upon Hull Local Access Forum
East Riding of Yorkshire Council
British Horse Society (local rep - Kent)
British Horse Society (local rep)
Broads Authority
Buckinghampshire County council
Burgwallis Parish
Burton-cum-Walden Parish Council
Bushey and District Footpaths Association
Calderdale Council
Cambridgeshire County Council
Campaign for the Protection of Rural England
Canoe England
Central Bedfordshire and Luton Joint Local Access Forum
Central Bedfordshire Council
Cheshire East Borough Council
Cheshire West and Chester Council
Chestfield Parish Council
Chideock Parish
Chiltern Harness Driving Club
East Sussex County Council
East Sussex Local Access Forum
English National Park Authorities Association
Essex Bridleways Association
Essex Local Access Forum
Exmoor National Park Authority
Exmoor National Park Authority
Feering Parish
Fenland Bridleways Association
Forest of Rossendale Bridleways Assoc
Gateshead Council
Geoplan Ltd (on behalf of Marshalls PLC)
Gloucestershire County Council
Gloucestershire Local Access Forum
Greater Manchester Public Rights of Way Officers Group
Green Lane Assoc & TreadLightly Area Rep
Green Lane Association, Essex
Green Lanes Environmental Action Movement
GreenSpace
Hampshire Countryside Access Forum
Hampshire County Council

Harrogate Bridleways Association
Herefordshire County Council
Hertfordshire County Council
Hertfordshire Local Access Forum
Honiton Town Council
Hull City Council (regional street custodians chairs group)
Hundingonshire District Council
Individual
Ingestre w Tixall Parish Council
Institute of Public Rights of Way & Access Management Ltd (IPRoW)
Ivegill Footpath Group
Iver Parish Council, Bucks
Joint Local Access Forum
Kent Association of Local Councils
Kent County Council
Kent TRF
Killinghall Parich Council
Kirklees Bridleways Association Group
Kirklees Bridleways Group
Kirklees Council
Lake District Local Access Forum
Lake District National Park
Lancashire County Council
Lanner Parish Counil
Leeds City Council
Leicester City Council
Leicestershire & Rutland Bridleways Association
Leicestershire and Rutland Bridleways Association
Leicestershire County Council
Leicestershire Local Access Forum
Lincolnshire & Rutland Local Access Forum
Lincolnshire County Council
Liss Parish Council
Malvern Hills District Footpath Society
Mancetter Parish Council
Marden Society Footpath Group
Marhamchurch Parish Council (Cornwall)
Mendip Bridleways and Byways Association
Merseyside, Halton and Warrington Local Access Forum
Mid Suffolk District Council and Babergh District Council
Ministry of Defence
Motoring Organisations' Land Access & Recreation Association
National Association of Local Councils
National Farmers Union
National Federation of Bridleway Associations
National Grid
Network Rail Infrastructure Limited
New Earswick Parish Council
New Forest Access Forum
New Forest Association
New Forest District Council
New Forest National Park Authority
New Romney Town Council
Newcastle City Council
Newtimber Parish Council
Norfolk County Council
North East Lincolnshire
North Somerset Council
North Somerset Local Access Forum
North Wales Trail Riders Fellowship
North York Moors National Park Authority
North Yorkshire County Council
North Yorkshire Local Access Forum
Northumberland County Council
Northumberland Joint Local Area Forum
Nottingham City Council
Nottinghamshire County Council
Nottinghamshire Local Access Forum
Ordnance Survey
Oxford Trail Riders Fellowship
Oxford Trail Riders Fellowship
Oxfordshire County Council
Patchetts Green Bridleways Trust
Peak and Northern Footpaths Society
Peak District Green Lanes Alliance
Peak District National Park Authority
Planning and Environment Bar Association
Plaxtol Parish Council
Plymouth City Council
Pole Moor Riding Club
Porth-en-Alls Estate
Ramblers Association
Rights of Way Review Committee
Rotherham Local Access Forum
Rotherham Metropolitan Borough Council
Royal Borough of Windsor and Maidenhead LAF
Salmon Consultancy Ltd.
Saltash Town Council
Sandwell MBC West Midlands Highway Authority

Sheffield City Council LAF
Shenley Church End Parish
Shevington Parish Council
Shropshire Council
Shropshire Local Access Forums
Shropshire Riding & Carriage Driving Forum, Shrewsbury & District Riding Club, and Nesscliffe Hills & District Bridleway Association.
Slough Borough Council
Solihull Meterpolitian Borough Council
Somerset County Council
Somerset Local Access Forum
Somerset Trail Riders Fellowship
South Derbyshire District Council
South Downs Local Access Forum
South Downs Society
South Gloucestershire Council
South Somerset Bridleways Association
South West Coast Path Association
Sport and Recreation Alliance
St Day Parish Council
St Modwen Properties Plc
Staffordshire County Council
Stanway Parish council
Stithians Parish Council
Stockport Council
Stockport LAF
Strensall with Towthorpe Parish Council
Suffolk County Council
Sunderland City Council
Surrey Countryside Access Forum
Sutton Under Whitestonecliffe Parish Council
Synergy Housing
Taunton Deane Bridleways Association
Tenant Farmers Association
Tess Valley Local Access Forum
Teston Parish Council
Thames Water Utilities Ltd
The Britsh Driving Society
The Byways and Bridleways Trust
The Kennel Club
The Open Spaces Society
The Treadlightly Trust
Trail Riders Fellowship (TRF) - Gloucestershire
Tyne and Wear Local Access Form
University of Lincoln
Volunteer with British Horse Society - local rep
Wakefield Council
Warrington Borough Council
Warwickshire County Council
Warwickshire, Solihull and Coventry LAF
Waveney Byway and Bridleway Association
West Berkshire Council
West Berkshire Council
West Pennine Bridleways Association
West Somerset and Exmoor Bridleways Association
West Sussex County Council
West Sussex local Access Forum
West Yorkshire Trail Riders Fellowship
Westmidlands Trail Riders Fellowship
Whitby Town Council
Wigan Council
Wiltshire and Swindon Countryside Access Forum
Wiltshire Bridleways Association
Wiltshire Council
Worcestershire County Council
Worcestershire Local Access Forum
Worlaby Parish Council
Yorkshire Dales Access Forum
Yorkshire Dales Green Lanes Alliance
Yorkshire Local Councils Associations