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To: Regulation Committee – For information and decision  
Portfolio Holder for Highways, Environment and Waste - For information

By: Director of Highways Environment and Waste to Kent County Council's  
Regulation Committee – 18 May 2010

Subject: Update on the Definitive Map Team Casework Schedules, clarification of  
Regulation Committee Terms of Reference and the County Council's  
approach to Orders made at the direction of the Secretary of State.

Classification: Unrestricted

District: All

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## Summary

A report updating the Regulation Committee on the Definitive Map Team casework schedules; clarifying the interpretation of the Regulation Committees terms of reference and the County Council's approach to orders made at the direction of the Secretary of State.

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## Background

### Registers of Cases

1.1 At the Regulation Committee on 27 January 2009 an update on the schedule of outstanding Village Greens and public rights of way (PROW) cases was requested. A Schedule of such cases to be included in the agenda papers for future meetings.

1.2 A had copy of the Register of Applications to amend the Definitive Map and Statement and Register of Diversion Applications has been circulated with this report. The registers are also available on line at

[https://shareweb.kent.gov.uk/Documents/environment-and-planning/public-rights-of-way/claims%20\(website\).pdf](https://shareweb.kent.gov.uk/Documents/environment-and-planning/public-rights-of-way/claims%20(website).pdf)

and

<https://shareweb.kent.gov.uk/Documents/environment-and-planning/public-rights-of-way/diversion-schedule-for-web.pdf>

2.1 The production of a register of applications to amend the Definitive Map and Statement was a requirement of the Countryside and Rights of Way Act 2000. The registers are regularly updated to reflect progress with case load.

2.2 There has been substantial progress made in recent years and the backlogs that previously existed have been reduced considerably. There is now an average wait of less than 18 months between receipt of application to amend the Definitive Map and Statement and the case being allocated to an officer. The nature of applications is extremely varied; more complex applications may take years to resolve, others months.

2.3 The likelihood is however that backlogs will grow in coming years as a result of a number of factors:

- i) The introduction of a cut off date after which it will not be possible to seek to amend the Definitive Map and Statement based purely on pre 1949 historic evidence. Currently this date is set at 1<sup>st</sup> January 2026, though the implementation of the date is currently suspended. It is anticipated that this will bring about a surge in applications.
- ii) The production of a new edition of the Definitive Map and Statement will demand a significant time input from the team unavoidably at the expense of case work.
- iii) The implementation of the Marine and Coastal Act 2009 creating a continuous right of access around the coast of England.
- iv) Additionally an upturn in the economy is likely to trigger additional case work in respect of development sites.
- v) It is also likely that Government will wish to revisit the introduction of a right to apply to divert PROW for agricultural landowners. In Kent such applications have always been considered. However, if introduced it will necessitate changes to existing procedures.

**Terms of reference**

3. The Constitution of the County Council sets out the terms of reference of the Regulation Committee in respect of Public Rights of Way in the following way:

“The Committee also considers: .....

- (c) the creation, stopping up, diversion of any footpath or bridleway or the **reclassification** of any public path where **substantive** objection has been raised or a political party or the local Member requests” .....

*(The Council agreed on 20 September 2001 that functions (a)-(c) could be delegated to sub-committees) .....*

3.1 The Terms of Reference of the Committee require amendment to reflect that their powers are also exercisable in terms of Restricted Byways. I have requested that the Constitution of the County Council be amended to reflect this legislative change.

3.2 There is a need for clarification of the precise interpretation to be given to the words “reclassification “ and “substantive” to ensure consistency in the application of the County Council’s functions and the interpretation by external parties of how policy is applied. Members are therefore requested to approve the following definitions to be applied to the work of the Regulation Committee in respect of public path orders and definitive map modification orders:

- i) “Reclassification” is to be interpreted as including any application made to modify the Definitive Map and Statement. Referral to the Regulation

Committee of applications to amend the Definitive Map and Statement is at the request of a political party or local member and prior to the making of any order. Once made such orders must be referred to the Secretary of State should objection be received and not withdrawn.

- ii) Substantive is to be interpreted in respect of the Regulation Committee terms of reference as referring to objections that meet the requirements of the legislation and are relevant to the circumstances of the order.

### **Approach to Orders made at the direction of the Secretary of State.**

4.1 The County Council is occasionally directed to make orders to amend the Definitive Map and Statement by the Secretary of State following appeal against an earlier decision of the authority. Where objections are received to such orders they stand referred back to the Secretary of State for determination. This is usually through written representations, public local hearing or public inquiry.

4.2 Traditionally the County Council has taken a neutral stance in the case of such orders. This is an acceptable position to take and DEFRA have provided guidance for authorities wishing to do so. There is however no policy statement to support such a position. I would therefore recommend that the following is adopted as policy.

4.3 “In cases where the County Council has been directed by the Secretary of State to make an order to amend the Definitive Map and Statement it shall remain neutral in further proceedings unless delegated power to take a different position is specifically sought and secured by the relevant officer”.

### **Recommendations**

5. I recommend that:

- (a) progress in reducing the backlog of outstanding definition cases is noted along with the likelihood that the backlogs will grow in future years.
- (b) the precise interpretation to be given to the interpretation of the words “reclassification” and “substantive” in the Regulation Committee’s terms of reference are accepted.
- (c) the County Council take a neutral stance in respect of orders it is directed to make by the Secretary of State unless delegated power is specifically sought and secured by the relevant officer.

### **Contact Officer**

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