



GUIDANCE NOTE

SECTION 31 (6) HIGHWAYS ACT 1980

DEEMED DEDICATION OF PUBLIC RIGHTS OF WAY

Summary

Section 31(1) of the Highways Act (1980) states that if there has been 20 years uninterrupted use of a path it could be presumed (or 'deemed') that the landowner intended to dedicate it as a right of way unless there is sufficient evidence to indicate that they did not intend to dedicate it for public use. However, landowners can prevent such use creating rights of way across their land by making deposits under section 31(6) of the Highways Act. This is known as a 'Section 31 (6) Deposit'.

Within the Lake District National Park landowners can send the Deposit to us (as the two Unitary Authorities' agents) or send it direct to the relevant UA.

Two types of document may be deposited under section 31(6):

- A **map and statement** of the current rights of way the landowner admits over the land (this is called **depositing a highways statement**)
- A subsequent **declaration** (made within a maximum of 20 years of the map/statement) that no further rights of way have been dedicated since depositing the map/statement, and the landowner does not intend to dedicate any further rights of way (this is called **lodging a highways declaration**).

You should apply using a standard defra form CA16 which is available on the gov.uk website as a [PDF](#) or [word document](#).

There is full [Defra Guidance](#) on Filling in Form CA16.

These additional Guidance Notes explain how to make a Section 31 (6) Deposit, and give more detailed background information.

Fees

Deposit of Statement & Map: £135

Deposit of Declaration: £80

Combined application (within a few weeks): £160

To discuss making a section 31(6) deposit, please contact:

Nick Thorne or Will Hinchliffe – Rights of Way Officers

nick.thorne@lakedistrict.gov.uk 01539 792621 or

will.hinchliffe@lakedistrict.gov.uk 01539 792696



Introduction

- 1.1 Public rights of way are classed in law as public highways. There are four categories:
 - Footpaths – right on foot only
 - Bridleways – right on foot, horseback or pedal cycle
 - Byway Open to All Traffic (BOAT) – right on foot, horseback, pedal cycle or vehicle (including motorised vehicles)
 - Restricted Byways – same rights as BOATs but excluding mechanically propelled vehicles.
- 1.2 Once a public right of way comes into existence it remains a highway unless it is changed by a formal legal process ('once a highway, always a highway'). Therefore, it does not cease to exist if it is not used or is not visible on the ground. There is still an obligation to keep the route open and available for use.
- 1.3 The definitive map provides conclusive evidence of the existence and status of any public rights of way shown on it, unless the map is altered by a legal change such as a Modification Order or Public Path Order. The absence of a right of way from the definitive map does not, however, mean that it does not exist, or that a right of way shown as a footpath does not have additional higher rights over it. These routes may be claimed and added to the definitive map through evidence of use for over 20 years or by historical documents (or a combination of both). In addition, the definitive map may not yet have been updated to show changes, which have come about through Public Path Orders (such as creations, diversions or extinguishments).
- 1.4 Public rights of way can come into being having been deemed to be dedicated. This occurs through 20 years' uninterrupted use by the public giving rise to a presumption that the landowner intended to dedicate the path as a right of way. The period of 20 years is counted back from the date on which the public's right to use the path was first brought into question or challenged.
- 1.5 Section 31(6) of the Highways Act (1980) allows a landowner to deposit maps, statements and declarations showing which of the ways over their land they recognise as being public rights of way. Together, the deposit of the map and statement, and the declaration will show an intention by the landowner not to dedicate new rights of way across their land. Procedures for making a section 31(6) deposit are given at the end of this document.



- 1.6 The highways declaration needs to be made within a maximum of 20 years of depositing the map and statement, stating that no additional ways have been dedicated since the deposit of the initial map/statement, and the landowner does not intend to dedicate any in future. This is sufficient, in the absence of proof to the contrary, to establish that no additional ways have been dedicated. The declaration needs to be further renewed subsequently each 20 years.
- 1.7 We will notify interested parties, such as user groups, parish councils and so on that an application has been made to make a Deposit under section 31(6). Deposits are also entered in the register of maps, statements and declarations. These registers will be available for public inspection. The list of deposits within the Lake District National Park (as well as the rest of Cumbria) can be viewed on the websites of Cumberland Council ([Section 31\(6\) of the Highways Act | Cumberland Council](#)) and Westmorland & Furness Council ([Section 31\(6\) of the Highways Act | Cumbria County Council \(westmorlandandfurness.gov.uk\)](#)) which also has all of the deposits submitted throughout Cumbria.
- 1.8 Making Deposits will immediately fix a point at which 'no intention to dedicate' is shown. This may stimulate a claim under deemed dedication or at common law.
- 1.9 The 2013 Regulations allow us to charge a reasonable fee for the costs incurred from processing an application. Costs will include: any maps or notices which we need to produce for the application; staff time to process the application and place it on a paper and electronic register.
- 1.10 The effect from the date of deposit of the map, statement, and declaration is threefold:
- Future use of unrecorded paths cannot lead to a public right of way successfully being claimed.
 - Where an unrecorded route is in use and has been used for less than 20 years, it will not be possible for a right of way to be claimed through deemed dedication (although a claim at common law may still be possible).
 - To dedicate public rights of way over paths which are acknowledged as public but are not shown on the definitive map and statement.
- 1.11 The Deposit will have no effect
- on the existence of public rights of way already shown on the definitive map.
 - on any rights which have already been established through past use before the statement was deposited, for example: claims based on historical evidence or through 20 years use prior to the first section 31(6) deposit.
- 1.12 Further advice is available from the National Farmers Union, Country Land and Business Association and other similar bodies.



Procedure For Making A Deposit

You should use the standard [Form CA16](#) to accompany your deposit. Defra has published [notes](#) on how to complete the form but, for clarity, we have provided additional guidance in these guidance notes. You can also use form CA16 to make a landowner statement in relation to town and village greens under the Commons Act, but you can leave these sections blank if you only want to make a deposit under the Highways Act.

You should complete the appropriate sections of Form CA16, according to whether you want to deposit a map/statement or lodge a highways declaration under section 31(6):

- Part A (details of the land) and Part F (statement of truth) should be filled in all cases
- Deposit a highways statement – Part B
- Lodge a highways declaration – Part C.

The **map and statement** should clearly show the extent of the property covered and the position of all the rights of way that the landowner knows to cross it. The statement should describe the status of each right of way running across the land (that is: footpath, bridleway, byway open to all traffic, restricted byway).

To complete the process of making the deposit, the map and statement should be followed up (within a maximum of 20 years), with a **declaration** that no further rights of way have been dedicated and that there is no intention to dedicate any.

Preparing a Map/Statement

We recommended that you take the following steps in preparing maps and statements, and under section 31(6):

- a) Obtain a recent or current map of the entire area that you own, showing the boundary of the land in coloured edging. Ordnance Survey maps should be at a scale of not less than 1:10,560. You can purchase ordnance survey plans from one of their commercial partner organisations – you can find details on the [OS website](#)
- b) Look at the definitive map and statement to find out what public rights of way are already recorded over your land (including carriageways), and their precise routes. An illustrative map is available at County Council offices or via their websites: Westmorland and Furness- [Public rights of way in Cumbria | Westmorland and Furness Council](#), Cumberland- [Public rights of way in Cumbria | Cumberland Council](#) – when the map loads, ensure that you have the Public Rights of Way layer selected from the menu button, then zoom in to the location you want to view or typing the location into the search bar will show the rights of way recorded at that location.
- c) It may also be advisable, though not necessary to:
 - check the status of any paths, tracks, farm roads or short cuts on your land and whether the public has been using them for 20 years or more;

- check legal documents such as Inclosure Awards to see whether other public rights of way exist which are not shown on the definitive map (held at local archive offices);
 - look at the list of publicly maintainable highways (held by the Cumbria County Council under section 36(6) of the Highways Act 1980) to identify unmetalled roads which may be recorded on it;
 - consult the parish council, user groups, local authority and local residents to see whether there are any other paths likely to be claimed which you may wish to recognise.
- d) Carefully mark up on the map the precise route and status of all public rights of way shown on the definitive map, or otherwise acknowledged by you to exist.
- e) You should not try to deny the existence of any public rights of way shown on the definitive map. As a matter of law the definitive map provides conclusive evidence of the existence and status of any public right of way shown on it until the map is altered by a legal order. Any statement or declaration under this process will not remove paths from the definitive map or alter their alignments, and so on.
- f) If you have made an application for a definitive map modification order to amend the map and statement in relation to a way shown on it, this may be referred to in the statement and declaration. For instance: *'The way coloured (something other than green, red, brown or purple) on the said map is recorded on the definitive map as a bridleway, but I do not accept that the map and statement are correct and have applied under section 53 of the Wildlife and Countryside Act 1981 to the Lake District National Park Authority for a definitive map modification order to be made to [state the effect of the order applied for]'.*
- g) If you wish to divert or extinguish a public right of way this can be done by a public path order - but this is a separate process. Unofficial diversions should not be shown unless you intend to dedicate them as a public right of way in addition to the definitive route: the effect of the statutory declaration will be to confer the right of way status on such routes. The route on the definitive map will remain a public right of way.
- h) Do not show on the map any permitted paths which are the subject of a formal agreement with the Lake District National Park Authority, or other permitted paths, unless it is intended to dedicate these as public rights of way. If you wish to advise of the existence of such paths you should provide a separate map showing only these paths and stating that you do not intend to dedicate the paths as public rights of way.
- i) The deposit should be made and signed by the owner or authorised representative of every owner of land concerned (the person who is for the time being entitled to dispose of the fee simple in the land) and if the land is owned by a body corporate or unincorporated association the secretary or other authorised officer must sign it. This includes the tenant for life (land held under a strict settlement) or the trustees (land held under a trust for sale). If an estate is so divided then it is important that the



appropriate person makes the deposit for each part of the estate in each case. If the person making the application (“the applicant”) is unable to read or sign the document a signed certificate should be provided by an authorised person to certify that:

- the contents of the document have been read to the applicant
- the applicant appears to understand and approves its contents;
- the statement of truth in Part F of the application has been read to the applicant;
- that the applicant appears to understand the statement and the consequences of making a false statement;
- that the applicant signed or made their mark in the presence of the authorised person.

j) Send Form CA16 and your map to us at

Rights of Way, Lake District National Park Authority, Murley Moss, Oxenholme Road, Kendal, LA9 7RL.

You must also confirm in writing that you will pay the processing fee on request.

When we Receive Your Map and Statement:

We will check your deposit against the definitive map and clarify any areas of uncertainty. We will then:

- put a copy of the map and statement on the public register (as above) on the relevant Council’s website and provide a link to it on [our website](#)
- send notification of the deposit of the map and statement to interested parties, such as user groups and the local parish council.

Making and Submitting a Declaration

The deposit of the map/statement should be followed up by lodging the declaration no more than 20 years from the date of the statement/map. You should also use standard form CA16 to make the declaration.

The declaration should be made and signed as outlined in (i) above. It should be accompanied by further maps, if necessary or should refer to any previously deposited maps.

We will charge the appropriate fee to process the deposit of a Declaration.

Send Form CA16 to us at the address given in (j) above, together with any supplementary maps or other documents. You must also confirm in writing that you will pay the processing fee on request.



Further declarations should be submitted at the same interval to ensure that the rebuttal of rights of way remains valid.

When we Receive your Declaration:

We will check your deposit against the definitive map and clarify any areas of uncertainty.

We will then:

- put a copy of the declaration on the relevant Council's website and provide a link to it on [our website](#)
- send notification of the deposit of the declaration to interested parties, such as user groups and the local parish council.

After You Have Made a Section 31 (6) Deposit:

You should keep copies of maps, statements and declarations with the title deeds for the property, or Land Charge Certificates, for future reference.

In addition to making your section 31 (6) deposit, you may find it useful to place signs or notices on your land on any path/tracks which you have not admitted to be public rights of way. For example: "[You are welcome to use] this way on foot, pedal cycle, leading a horse, or on horseback [but it] has not been dedicated as a public right of way. Permission may be withdrawn at any time."