

Access to Public Rights of Way Information in England and Wales

Guidance Document

**Endorsed by the Rights of Way Review
Committee**

Valid until 31 March 2009

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1. Introduction

Local authorities have a statutory duty to create and maintain the Definitive Map of Public Rights of Way (PRoW) for their authority area of responsibility. They must also notify the public of proposed changes. The PRoW information is usually held in descriptive textual records and on maps. The local authority owns the intellectual property rights of these textual records together with those that it has indicated on the Definitive Map. These include definitive statements, Orders modifying the Definitive Map, statements made under the Wildlife and Countryside Act 1981 and Orders made under the Highways Act 1980 and the Town and Country Planning Act 1990. PRoW are usually drawn on an Ordnance Survey map. The map copyright is managed by Ordnance Survey on behalf of the Crown, whereas the PRoW information is the intellectual property of the local authority. Such copyright and intellectual property rights are protected by the Copyright, Designs and Patents Act 1988 (CDPA).

Ordnance Survey maps are used by local authorities under licence, in return for the payment of a royalty and a supply fee. Local authorities have a licence to use Ordnance Survey products, as part of a national Mapping Services Agreement (MSA) currently valid until 31st March 2009, managed on their behalf by the Improvement and Development Agency's subsidiary the Local Government Information House (LGIH). The MSA enables local authorities to make their information available to the public using Ordnance Survey mapping as a background.

This document has been written by the LGIH with the full cooperation of Ordnance Survey. It has been endorsed by the Rights of Way Review Committee and represents current best practice advice for organisations and individuals involved in using PROW information.

2. Rules for the request for copies of PRoW Definitive Maps

In general, copyrighted and intellectual property righted material cannot be reproduced without the permission of the owners but there are some important exceptions permitted that allow copying under statutory requirements and also for personal review.

2.1. Statutory Requirements

Section 47 of the CDPA allows the public to be issued with copies of any map that is open to public inspection under a "statutory requirement", this being a requirement imposed by provision, made by, or under, an enactment, see section 47(6) of the CDPA.

Similarly, statutory communications are necessary where events affect a PRoW. The Highways Act 1980, Wildlife and Countryside Act 1981, Town and Country Planning Act 1990 and some other Acts require local authorities to notify people who are affected by events affecting a PRoW, such as altering the line of a footpath or extinguishing a bridleway. This includes

proposals to modify the Definitive Map. Those organisations prescribed in statute must also be notified. Such statutory notices might include the provision of map-based information.

Other typical statutory matters include PRow improvement plans, local plans, mineral plans and local transport plans.

Section 47(2) of the CDPA states that:

"Where material is open to public inspection pursuant to a statutory requirement, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed."

Section 50(1) of the CDPA provides that:

"Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright."

2.1.1. Supplying copies of maps for Statutory Requirements

The Local Government Act 1972 allows persons looking at Definitive Maps to make copies. Section 228(5) states that:

"Subject to any provisions to the contrary in any other enactment or instrument, a person interested in any document deposited as mentioned in section 225 above may, at all reasonable hours, inspect and make copies thereof or extracts therefrom on payment to the person having custody thereof of the sum of 10p for every such inspection, and of the further sum of 10p for every hour during which such inspection continues after the first hour."

Section 228(6) continues:

"A document directed by this section to be open to inspection shall be so open at all reasonable hours and, except where otherwise expressly provided, without payment."

It is a criminal offence for anyone to obstruct inspection of a Definitive Map or to obstruct anyone entitled to make a copy.

With regard to Ordnance Survey mapping and data, if a copy is requested and the issuing officer (the appropriate person under the CDPA) within the local authority is satisfied with the legitimacy of the request then one appropriately acknowledged copy of the material may be provided if it:-

- is limited to the actual area of the request; and
- it complies with the terms of *Statutory Instrument 1989 of the CDPA, The copyright (Material open to public inspection) (marking of copies of maps) Order* by having the following additional notation added:

"This copy has been made by or with the authority of [put in the name of the person who must make the map open to public inspection or the person keeping the register] pursuant to section 47 of the Copyright, Designs and Patents Act 1988 (the Act). Unless the Act provides a relevant exception to copyright, the copy must not be copied without the prior written permission of the copyright owner"

If more than one copy is requested then the issuing officer must be satisfied that these further requests are legitimate. Alternatively, the applicant will need to get separate written permission (if from Ordnance Survey this is usually in the form of a Paper Map Copying Licence) from the copyright owners.

Please note that Crown copyright remains in place for 50 years from the end of the year of publication, for example any Crown material published in 2007 will be subject to Crown copyright until 31 December 2057.

2.1.2. Use of maps in statutory consultation processes for rights of way

When local authorities make or confirm public path orders and carry out other legal changes to the ROW network they are required by law to consult a number of prescribed consultees. The CDPA allows local authorities to supply copies of the orders together with an associated order plan. In addition to the MSA provisions, see 2.3 below, the plan must comply with the terms of the *Statutory Instrument 1989 of the CDPA, The copyright (Material open to public inspection) (marking of copies of maps) Order* by having the following additional notation added:

“This copy has been made by or with the authority of [put in the name of the person who must make the map open to public inspection or the person keeping the register] pursuant to section 47 of the Copyright, Designs and Patents Act 1988 (the Act). Unless the Act provides a relevant exception to copyright, the copy must not be copied without the prior written permission of the copyright owner”

Many local authorities may wish to email the orders and plans to the prescribed consultees and or place these orders on the Internet. This is allowed as long as the maps are supplied in a raster format appropriately acknowledged and have a watermark that clearly identifies the local authority if the scale of the plan is a larger scale than 1:10,000 scale. The prescribed consultee may make further copies of the orders and plans without breaching copyright. The copies can only be used for the purposes of the consultation. Any further use of the copies is a breach of copyright.

2.1.3. Use of maps in inquiry proceedings

Under section 45 and 46 of the *CDPA* copies of Ordnance Survey material which has been appropriately acknowledged, can be used if they are needed for a parliamentary or judicial proceedings, or the proceedings of a Royal Commission or statutory inquiry or hearing. Appropriately acknowledged extracts can be incorporated into reports used in the proceedings without breaching copyright.

2.1.4. Area of mapping to be provided

There is no limitation on the size of area to be copied under sections 45, 46, 47 and 50(1) of the *CDPA*. Ordnance Survey prefers that the area of the mapping provided be as limited as possible, this means a preferred maximum paper copy size of A4, limiting the copy to the specific area of

interest. This view may be taken into account by the 'appropriate person' when making the decision to release copies of statutory documents which include Ordnance Survey mapping. The supply is normally one paper copy although a digital image version is also permissible.

2.2. Fair Dealing

Sections 29 and 30 of the CDPA allow an individual person to make a copy for the purposes of private research or study, criticism or review, this is known as "fair dealing":

"Fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe any copyright in the work or, in the case of a published edition, in the typographical arrangement."

Additionally, the CDPA states that copying by a person other than the researcher or student themselves is not fair dealing if:

"the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose".

"Research" does not include that undertaken for commercial or industrial purposes, such copying will be considered a breach of copyright;

"private study" excludes group study.

Regarding classroom study, as Ordnance Survey already supplies local authorities with its products, local authority funded schools benefit from being regarded by Ordnance Survey as departments of their local authority.

Further information is downloadable from Ordnance Survey at:

<http://www.ordnancesurvey.co.uk/oswebsite/education/copyright/index.html>.

For more details, see 'Copyright in Public Libraries' published by The Library Association.

Ordnance Survey digital material is also covered by *The Copyrights and Rights in Databases Regulations 1977*. Under these regulations the use of Ordnance Survey digital data to produce hard copy material for commercial or industrial research purposes is a breach of copyright and not "fair dealing".

2.2.1. Supplying copies of Ordnance Survey maps under fair dealing

This part of the CDPA has little bearing on supplying PRow Definitive Maps. However, it does impact on the supply of Ordnance Survey mapping alone (i.e. where no LA information has been added). Generally, it is recommended that supplying information under "fair dealing" means supplying only one appropriately acknowledged copy of an Ordnance Survey map up to A4 size, or as limited an area as possible. In exceptional circumstances it is acceptable to supply up to 4 copies of any one map extract not exceeding A4 size. As with other sections of the CDPA Ordnance Survey prefers that the area of the mapping provided be as limited as

possible, hence a preferred maximum paper copy size of A4, limiting the copy to the specific area of interest.

In all circumstances the CDPA requires that the appropriate acknowledgement be added to the extract

“© Crown copyright. All rights reserved (licence number) (year document is published)”

“© Hawlfraint y Goron. Cedwir pob hawl (rhif trwydded) (blwyddyn cyhoeddi'r ddogfen)”

Local authorities may have their own approach to managing how “fair dealing” requests are managed and this may require that a declaration form be signed by the person receiving the copies under these clauses of the CDPA. It would be normal that each copy be stamped as follows:

“This copy is supplied under the ‘fair dealing’ provision of the Copyright, Designs and Patents Act 1988. No further copies may be made without permission of Ordnance Survey. Unauthorised reproduction may lead to prosecution or civil proceedings.”

With regard to the copying of Ordnance Survey maps in libraries that show no other information. The Libraries and Archivists Copyright Alliance (LACA) have issued a ‘note for guidance’ poster that can be displayed in prominent positions close to copying equipment. Ordnance Survey will also make this poster available to libraries free of charge on request.

In reality, what this means is local authorities can still provide Ordnance Survey map extracts via “Fair Dealing” through their library services but not through FOIA requests directed at the local authority.

2.3. Mapping Services Agreement (MSA) Provisions

The MSA, within the limitations of the CDPA, permits a local authority to copy and distribute Ordnance Survey mapping for use in connection with its business. Local authorities are licensed to provide information to third parties, including members of the public subject to licence terms and conditions prescribed in the MSA providing it meets the administration and operational business needs of the local authority.

The supply of both paper and electronic formats are permissible under this licence. The extent of the Ordnance Survey map must be only that appropriate for the purpose in question, see **section 2.1** above. Clearly it needs to show, for example, specific PRow of concern but must not include extensive areas of unnecessary Ordnance Survey mapping nearby. Local authority officers are responsible for determining the appropriate extent and numbers of copies. The MSA sets out mandatory Ordnance Survey copyright acknowledgements that have to be printed on such mapping.

2.4. The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR)

Where a member of the public applies to view or take a copy of a statutory document, **neither the FOIA nor the Environmental Information regulations 2004 apply**. It is a principle of the FOIA that where other legislation allows access to information, then that other legislation carries precedence. This access is legislated for under the 'public administration' sections 45 to 50 of the CDPA. Requests for statutory information held by a local authority, such as PRow Definitive Map information, can be met in this way with Ordnance Survey mapping as a background. The maps must be of an appropriate scale and size and be annotated with the appropriate copyright acknowledgements.

Where the above does not apply, a member of the public can request information under the FOIA. Although inspection of the mapping is acceptable, provision of mapping alone (i.e. where no local authority data has been added) is not allowed. This comes under section 21 (2) (a) exclusion of the FOIA which pertains that the "Information is accessible to the applicant by other means". However, a member of the public could use the "fair dealing" sections of the CDPA to acquire the Ordnance Survey mapping.

If section 21 does not apply and FOIA still applies, charges can be applied of up to £450 where the work and research involved exceeds 18 man hours (the charge being set at £25.00 per hour). Charges for full cost of copying and disbursements are always allowable. The request for information can be refused if the work involved would exceed £450 under section 12 of the FOIA, however, the issuing officer must inform the applicant that this is the case and provide them with an estimate. The requestor has the option to pay the amount if they wish the work to be carried out or they may opt to refine their request to bring the cost down.

Similar rules apply to requests made under the Environmental Information Regulations 2004.

3. The responsibility of recipients

Those receiving copies of maps under the above rules must use them only for the statutory purpose for which they have been provided. If they wish to make additional copies or use them for any other purpose, they must get the permission of Ordnance Survey and the local authority.

4. Charges

Obtaining copyrighted material normally involves royalty payment to the copyright owner and this is equally true of Ordnance Survey mapping. However there are exceptions, the MSA and the CDPA enable royalty free distribution of copyrighted material as long as licensing conditions and the CDPA regulations are adhered to. See **sections 2.1 through to 2.4** of this guidance document. The CDPA allows libraries and archive functions to recoup administration costs for copying and supply of information. It is also common practice for other local authority functions to levy administrative

charges for labour, using a copying machine, postage and the like. In addition all local authorities should have a Publications Scheme that outline costs for the supply of information under the FOIA and EIR.

5. Copies of the PROW Definitive Map

As mentioned above, local authorities must allow the public to inspect the PROW Definitive Map and allow them to make a copy of parts of it for the purpose of viewing at a more convenient time and place. "Making copies" means the person taking one copy using, for example, a public photocopying machine, a camera, tracing paper, or transcription. If the local authority is willing to provide copies, some authorities request a charge for doing so, as mentioned above. Before the issuing officer allows a person to make a copy, the officer must be satisfied that there is a justification for the request. For example, the person could need to check the status of a particular PROW route because they want to use it or because of an interest in the land. The request should include reference to a specific PROW route and the reason for seeking a copy of the information, purely wanting to walk a route should not be seen as a sufficient reason to request complete copies of the PROW Definitive Map.

If the person asks for more than one copy of the map extract, then up to 3 additional copies are deemed as acceptable if the request is judged by the issuing officer as genuine. Any further copies and the issuing officer should explain that this is not permissible and the appropriate permission of the copyright owner (Ordnance Survey if the request involves one of its maps) should be sought before any additional copies can be made.

The Wildlife and Countryside Act 1981 states that copies of the map and statement, along with any modifying orders shall be available for inspection within relevant districts or parishes, so far as appears practical. This may be interpreted as paper copies or access to the electronic version at local authority offices (e.g. divisional offices or libraries).

Some voluntary organisations like the Ramblers may request whole copies of PROW Definitive Maps to carryout systematic surveys of PROW. This is not allowed under Section 44 of the FOIA Act. However, it is allowed under section 47 of the CDDA. **Section 2.1 to 2.1.3** of this guidance document will apply to the request. Local authority officers with a PROW responsibility or issuing officers must be certain that the request is legitimate. Local authorities are encouraged to enter into contracts with groups wishing to carryout systematic surveys. The MSA has provision for these tasks, see **section 6** below.

6. Contractors

Local authorities sometimes enter into a contract with outside individuals, companies or organisations to act as statutory consultees, including volunteers to handle PROW tasks on their behalf. The MSA calls these "Contractors" and allows the local authority to provide them with mapping necessary to carry out the contract. Contractors must sign a licence provided at Schedule 7 of Schedule 7 of the MSA to receive the PROW

Definitive Maps in order to undertake work on behalf of the local authority. This licence sets out the copyright and use conditions for map data. The local authority should ensure that any copyright created by the contractor as a result of their work under the contract should be assigned back to the local authority. The contractor may subcontract mapping material and works to another contractor providing this is detailed in the contract.

All copies of the maps including original mapping products, updates, interim drafts, working drawings and final versions, irrespective of the form, must be returned to the local authority at the end of the contract. The contractor must not retain copies of any of these products (except where the contract provides for one copy to be retained for archive reference purposes) or take copies or otherwise use them for any other purpose. The same licence conditions apply to volunteer groups even when they undertake unpaid work on behalf of the local authority.

7. Publishing of Maps

A local authority is entitled to publish Ordnance Survey mapping as background to its own authority data in order to support the interpretation of the subject. This is a normal use in accordance with business requirements set out in the MSA. The local authority cannot use Ordnance Survey or Ordnance Survey derived material in publications for financial gain unless additional publishing licenses and royalties are specifically agreed beforehand with Ordnance Survey. Such re-use is also prohibited under the Re-use of Public Sector Information Regulations 2005 where an appropriate licence has not been agreed.

8. Information Technology

Increasingly, the public can browse PRoW Definitive Map on local authority web sites. This uses digital mapping held by the local authority and used in accordance with the MSA which sets out 9 stipulations, two of which are that;

1. the maps must not be displayed without local authority data simultaneously displayed over them, and
2. a local authority watermark be displayed on all mapping at scales of 1:10,000 or larger.

Kiosks and terminals that are a part of a local authority's local area network may be used to allow the public to browse PRoW Definitive Maps on screen, although the electronic data must not be accessible.

9. Further Information

For further information or clarification, contact your local authorities Authority Liaison Officer (ALO), an officer appointed by each authority to oversee the MSA interests.

10. Frequently Asked Questions.

Q1 **A member of the public or a user group requests a copy of the complete PRow Definitive Map for their area. Can we supply the map without breaking copyright?**

A You must decide if the request is genuine. If the person just wants to use the map solely as a reference when walking, then the answer is no. They should be advised to buy an up to date commercially available map of the area that shows PROW routes. Extracts of the PRow Definitive Map could be provided without breaking copyright if the person has a specific interest in the PROW, for example if they are a landowner or if they are seeking clarification as to the exact line of a route. There are no restrictions in the area of mapping to be provided but the area provided should be limited to the area of interest. *See section 2.1 of this guide for further advice.* In some circumstances, it may be acceptable to provide a whole copy of the PRow Definitive Map. If the request for the map is say for a systematic survey by the Ramblers, or an individual then this would be acceptable. In this instance, local authorities could work in partnership and use contract arrangements to ensure copyright is maintained. *See sections 5 and 6 of this guide for further advice.*

Q2 **A member of the public or a user group requests a copy of a PROW order. Can we supply the order without breaking copyright?**

A Yes. As long as the order plan is correctly marked with the applicable copyright acknowledgement. *See section 2.1.1. of this guide for further advice.*

Q3 **I need to provide documents for a Public Enquiry or a council committee. Can I do this without breaking copyright?**

A Yes. Extracts can be used in reports and evidence bundles without breaching copyright. There are no limits on the size or numbers of extracts. However, they must be limited to what is required for the purposes of the enquiry or committee and display the applicable copyright acknowledgement. *See sections 2.1.3 and 2.3 of this guide for further advice.*

Q4 **Can we charge for the supply of maps?**

A Yes, an administrative charge can be made to cover administration and material costs in some circumstances, supplying copies from a library or archive is one such example. It is up to each local authority to decide how much this should be.

Q5 **A member of the public or a user group requests copies of Ordnance Survey mapping without additional information drawn on them. Can we supply the map without breaking copyright?**

A Under fair dealing, small extracts of Ordnance Survey mapping can be provided through libraries normally for an administrative fee. If the request is for a large area, then the mapping cannot be supplied as it

is reasonably available to the requestor from other sources i.e. high street shops etc. If the individual or user group is doing work for the authority then mapping can be supplied once a contractor licence has been signed. See sections 2.2 and 6. of this guide for further advice.

Q6 A member of the public or user group requests copies of the 'working copy PRow Definitive Map'. Can we supply the map without breaking copyright?

A Generally, the answer is no. Whole copies cannot be provided unless the individual or user group is working as a contractor for the authority. Extracts may be provided as part of the MSA licensing agreement, subject to size and copyright acknowledgements. If the request is made under the FOIA Ordnance Survey insists that the maximum extract size should be limited to A4 or failing this, it should be limited to the area of interest. However, if there is an insistence in the request that the whole map should be provided then the position is not clear. In the first instance the local authority, Authority Liaison Officer should be consulted in these cases.

Q7 Can I copy and send Ordnance Survey maps to colleagues within the Local Authority?

A Yes, any form of copying and sending of Ordnance Survey information within a local authority is permitted under the MSA as long as the correct copyright acknowledgement is displayed. This copying is limited to the Ordnance Survey products supplied within the MSA. Some Ordnance Survey products in use in your authority may not form part of the MSA and will have separate licence conditions. Your Authority Liaison Officer will be able to help in these cases.

Q8 Can we supply copies of Ordnance Survey mapping to members of the public to annotate for Section 147 and Section 31(6) agreements?

A Plain Ordnance Survey map extracts cannot be supplied for this purpose. However, authorities can provide Ordnance Survey map extracts or PRow Definitive Maps with additional information displayed on them in order that the public can then annotate and return. These maps will then form part of a statutory deposit and can then be re-supplied to the member of the public who has an interest in the land.

Q9 Can we supply order plans electronically to prescribed consultees?

A Yes, but the maps must be watermarked if the scale is a larger scale than 1:10,000 and must be supplied in a raster format. The maps should have the appropriate copyright acknowledgement. See section 2.1.2 of this guide for more information. Prescribed consultees can make additional copies of the orders and associated plans but only to use as part of the consultation. A covering email indicating that the order plan is supplied solely for the purposes of the consultation and can only be used and copied for that purpose is recommended.