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STATUTORY INSTRUMENTS

2008 No. 442

HIGHWAYS, ENGLAND

The Public Rights of Way (Combined Orders) (England) Regulations 2008

<i>Made</i>	- - - -	<i>19th February 2008</i>
<i>Laid before Parliament</i>		<i>25th February 2008</i>
<i>Coming into force</i>	- -	<i>6th April 2008</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 53A(1)(a), 56(3A) and 57(1), (2) and (6A) of the Wildlife and Countryside Act 1981(1):

Title, commencement and application

1. These Regulations—

- (a) may be cited as the Public Rights of Way (Combined Orders) (England) Regulations 2008;
- (b) come into force on 6th April 2008; and
- (c) apply in relation to England only(2).

Interpretation

2. In these Regulations—

“the Act” means the Wildlife and Countryside Act 1981;

“section 53A Order” means an order to which section 53A of the Act applies by virtue of regulation 3, and a “relevant section 53A Order” is one for which a form is prescribed by any enactment(3).

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- (1) 1981 c. 69; section 53A was inserted by section 51 of, and paragraph 2 of Schedule 5 to, the Countryside and Rights of Way Act 2000 (c. 37) (“the 2000 Act”); section 56(3A) was inserted by section 51 of, and paragraph 6(6) of Schedule 5 to, the 2000 Act; relevant amendments to section 57 were made by sections 51 and 102 of, paragraph 7(1), (2), (3) and (6) of Schedule 5 to, and Part II of Schedule 16 to, the 2000 Act.
 - (2) The functions of the Secretary of State under section 53A of the Wildlife and Countryside Act 1981 are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as extended by section 99 of the 2000 Act.
 - (3) Forms of orders for an order made under section 26, 118 or 119 of the Highways Act 1980 are prescribed in the Public Paths Orders Regulations 1993 (S.I. 1993/11, amended by S.I. 1995/451, 1997/2971, 1999/416, 2006/1177). Forms of orders for an order made under section 118A or 119A of the Highways Act 1980 are prescribed in the Rail Crossing Extinguishment and Diversion Orders Regulations 1993 (S.I. 1993/9, amended by S.I. 1995/451, 1996/416, 1997/2971, 2003/2155, 2006/1177). Forms of orders for an order made under section 118B(4) or 119B(4) of the Highways Act 1980 are prescribed in the Highways, Crime Prevention etc. (Special Extinguishment and Special Diversion Orders) Regulations 2003 (S.I. 2003/1479, amended

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Section 53A Orders

3. The following descriptions of order are prescribed as descriptions of order to which section 53A of the Act applies (where they are of the kind described in paragraphs (b) to (d) of section 53A(1))—

- (a) those made under any of these provisions of the Highways Act 1980(4)—
 - (i) section 26 (compulsory powers for creation of footpaths, bridleways and restricted byways);
 - (ii) section 118 (stopping up of footpaths, bridleways and restricted byways);
 - (iii) section 118A (stopping up of footpaths, bridleways and restricted byways crossing railways);
 - (iv) subsection (4) of section 118B (stopping up of certain highways for purposes of crime prevention, etc);
 - (v) section 119 (diversion of footpaths, bridleways and restricted byways);
 - (vi) section 119A (diversion of footpaths, bridleways and restricted byways crossing railways);
 - (vii) subsection (4) of section 119B (diversion of certain highways for purposes of crime prevention, etc);
 - (viii) section 119D (diversion of certain highways for protection of sites of special scientific interest);
- (b) those made under section 32 (power to extinguish certain public rights of way) of the Acquisition of Land Act 1981(5);
- (c) those made under section 294 (extinguishment of public rights of way over acquired land) of the Housing Act 1985(6);
- (d) those made under any of these provisions of the Town and Country Planning Act 1990(7)—
 - (i) subsection (2A) of section 247 (highways affected by development: orders by Secretary of State);
 - (ii) section 257 (footpaths, bridleways and restricted byways affected by development: orders by other authorities);
 - (iii) subsection (1) of section 258 (extinguishment of public rights of way over land held for planning purposes).

by S.I. 2004/3168). A form of order for an order made under section 294 of the Housing Act 1985 is prescribed in the Housing (Prescribed Forms) Regulations 1990 (S.I. 1990/447, amended by S.I. 1997/2971). Forms of orders for an order made under section 257 or 258(1) of the Town and Country Planning Act 1990 are prescribed in the Town and Country Planning (Public Path Orders) Regulations 1993 (S.I. 1993/10, amended by S.I. 1995/451, 1997/2971, 2006/1177). No forms of orders have been prescribed for an order made under section 119D of the Highways Act 1980, section 32 of the Acquisition of Land Act 1981, or section 247(2A) of the Town and Country Planning Act 1990.

- (4) 1980 c. 66; section 118A was inserted by section 47 of, and paragraph 3 of Schedule 2 to, the Transport and Works Act 1992 (c. 42); section 118B was inserted by section 57 of, and paragraph 8 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (“the 2000 Act”); section 119A was inserted by section 47 of, and paragraph 4 of Schedule 2 to, the Transport and Works Act 1992; sections 119B and 119D were inserted by section 57 of, and paragraph 12 of Schedule 6 to, the 2000 Act; sections 26, 118, 118A, 119, 119A and 119B have been amended by S.I. 2006/1177; section 119D has been amended by section 105(1) of, and paragraph 64 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16).
- (5) 1981 c. 67; section 32 has been amended by the Civil Aviation Act 1982 (c. 16), the Telecommunications Act 1984 (c. 12), the Airports Act 1986 (c. 31), the Planning (Consequential Provisions) Act 1990 (c. 11), the Communications Act 2003 (c. 21) and by S.I. 2001/4050.
- (6) 1985 c. 68; section 294 has been amended by the Local Government and Housing Act 1989 (c. 42).
- (7) 1990 c. 8; section 247 has been amended by the Greater London Authority Act 1999 (c. 29) and S.I. 2006/1281; sections 257 and 258 have been amended by S.I. 2006/1177.

Relevant date

4. The relevant date required(8) to be specified in a section 53A Order which includes provision made by virtue of section 53A(2) of the Act is the date upon which the stopping up (also referred to as the extinguishment), diversion or, as the case may be, creation of the path effected by that Order comes fully into effect.

Form of order

5. That part of a relevant section 53A Order which contains provision made by virtue of section 53A(2) of the Act must be in the form prescribed for an order of the description in question, as modified in the manner set out in the Schedule, or in a form substantially to the like effect, with such insertions or omissions as are necessary in any particular case(9).

Scale of maps in orders

6. Any map contained in a section 53A Order which shows anything as a consequence of provision made by virtue of section 53A(2) of the Act must be on a scale of not less than 1:2,500.

Jonathan Shaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

19th February 2008

(8) The requirement is contained in section 56(3A) of the Wildlife and Countryside Act 1981 (inserted by section 51 of, and paragraph 6(6) of Schedule 5 to, the 2000 Act). The “relevant date” is the date on which the provisions of the section 53A Order take effect: *see* section 53A(6).

(9) Forms of orders for an order made under section 26, 118 or 119 of the Highways Act 1980 are prescribed in the Public Paths Orders Regulations 1993 (S.I. 1993/11, amended by S.I. 1995/451, 1997/2971, 1999/416, 2006/1177). Forms of orders for an order made under section 118A or 119A of the Highways Act 1980 are prescribed in the Rail Crossing Extinguishment and Diversion Orders Regulations 1993 (S.I. 1993/9, amended by S.I. 1995/451, 1996/416, 1997/2971, 2003/2155, 2006/1177). Forms of orders for an order made under section 118B(4) or 119B(4) of the Highways Act 1980 are prescribed in the Highways, Crime Prevention etc. (Special Extinguishment and Special Diversion Orders) Regulations 2003 (S.I. 2003/1479), amended by S.I. 2004/3168. A form of order for an order made under section 294 of the Housing Act 1985 is prescribed in the Housing (Prescribed Forms) Regulations 1990 (S.I. 1990/447, amended by S.I. 1997/2971). Forms of orders for an order made under section 257 or 258(1) of the Town and Country Planning Act 1990 are prescribed in the Town and Country Planning (Public Path Orders) Regulations 1993 (S.I. 1993/10, amended by S.I. 1995/451, 1997/2971, 2006/1177). No forms of orders have been prescribed for an order made under section 119D of the Highways Act 1980, section 32 of the Acquisition of Land Act 1981, or section 247(2A) of the Town and Country Planning Act 1990.

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SCHEDULE

Regulation 5

Forms of that part of relevant Section 53A Orders containing provision made by virtue of section 53A(2) of the Act

Public path creation order

1. In relation to an Order made under section 26 of the Highways Act 1980 (referred to in that Act as a “public path creation order”**(10)**), being a section 53A Order, Form 1 in Schedule 1 to the Public Path Orders Regulations 1993**(11)** (being the form prescribed for such an Order) is amended as follows—

(a) insert, as a second paragraph of the preamble to the Order—

“This Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the [title] definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(iii) of the 1981 Act, namely, the creation (as authorised by this Order) of a new right of way over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a [public path][restricted byway].”;

(b) insert, at the end of paragraph 1 of the Order, the words “, and thereupon the [title] definitive map and statement shall be modified accordingly”.

Public path extinguishment order

2. In relation to an Order made under section 118 of the Highways Act 1980 (referred to in that Act as a “public path extinguishment order”**(12)**), being a section 53A Order, Form 3 in Schedule 1 to the Public Path Orders Regulations 1993 (being the form prescribed for such an Order) is amended as follows—

(a) insert, as a second paragraph of the preamble to the Order—

“This Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the [title] definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the stopping up (as authorised by this Order) of a highway hitherto shown or required to be shown in the map and statement.”;

(b) insert, at the end of paragraph 1 of the Order, the words “, and thereupon the [title] definitive map and statement shall be modified accordingly”.

Rail crossing extinguishment order

3. In relation to an Order made under section 118A of the Highways Act 1980 (referred to in that Act as a “rail crossing extinguishment order”**(13)**), being a section 53A Order, Form 1 in Schedule 2 to the Rail Crossing Extinguishment and Diversion Orders Regulations 1993**(14)** (being the form prescribed for such an Order) is amended as follows—

(a) insert, as a second paragraph of the preamble to the Order—

(10) See the Highways Act 1980, section 26(1).

(11) S.I. 1993/11, amended by S.I. 1995/451, 1997/2971, 1999/416, 2006/1177.

(12) See the Highways Act 1980, section 118(1).

(13) See the Highways Act 1980, section 118A(3).

(14) S.I. 1993/9, amended by S.I. 1995/451, 1996/416, 1997/2971, 2003/2155, 2006/1177.

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“This Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the [title] definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the stopping up (as authorised by this Order) of a highway hitherto shown or required to be shown in the map and statement.”;

- (b) insert, in the final paragraph of the Order after the words “the date of confirmation of this order”, the words “and requires that upon the occurrence of that extinguishment the [title] definitive map and statement are to be modified accordingly”.

Special extinguishment order

4. In relation to an Order made under section 118B(4) of the Highways Act 1980, being a section 53A Order, both Form 1 (being the form prescribed for such an Order made as respects a relevant highway in an area designated by the Secretary of State pursuant to section 118B(1)(a)) and Form 2 (being the form prescribed for such an Order made as respects a relevant highway which crosses land occupied for the purposes of a school in the circumstances specified in section 118B(1)(b)) in Schedule 1 to the Highways, Crime Prevention etc. (Special Extinguishment and Special Diversion Orders) Regulations 2003(15) are amended as follows—

- (a) insert, as the final paragraph of the preamble to the Order—

“This Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the [title] definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the stopping up (as authorised by this Order) of a highway hitherto shown or required to be shown in the map and statement.”;

- (b) insert, at the end of paragraph 1 of the Order, the words “, and upon the occurrence of that extinguishment the [title] definitive map and statement shall be modified accordingly”.

Public path diversion order

5. In relation to an Order made under section 119 of the Highways Act 1980 (referred to in that Act as a “public path diversion order”(16)), being a section 53A Order, Form 2 in Schedule 1 to the Public Path Orders Regulations 1993 (being the form prescribed for such an Order) is amended as follows—

- (a) insert, as a second paragraph of the preamble to the Order—

“This Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the [title] definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the diversion (as authorised by this Order) of a highway shown or required to be shown in the map and statement.”;

- (b) insert, at the end of both paragraph 1 and paragraph 3 of the Order, the words “, and thereupon the [title] definitive map and statement shall be modified accordingly”.

(15) S.I. 2003/1479, amended by S.I. 2004/3168.

(16) See the Highways Act 1980, section 119(1).

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Rail crossing diversion order

6. In relation to an Order made under section 119A of the Highways Act 1980 (referred to in that Act as a “rail crossing diversion order”**(17)**), being a section 53A Order, Form 2 in Schedule 2 to the Rail Crossing Extinguishment and Diversion Orders Regulations 1993 (being the form prescribed for such an Order) is amended as follows—

(a) insert, as a second paragraph of the preamble to the Order—

“This Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the [title] definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the diversion (as authorised by this Order) of a highway shown or required to be shown in the map and statement.”;

(b) insert, at the end of both paragraph 1 and paragraph 3 of the Order, the words “, and thereupon the [title] definitive map and statement shall be modified accordingly”.

Special diversion order

7. In relation to an Order made under section 119B(4) of the Highways Act 1980 (referred to in that Act as a “special diversion order”**(18)**), being a section 53A Order, both Form 3 (being the form prescribed for such an Order made as respects a relevant highway in an area designated by the Secretary of State pursuant to section 118B(1)(a) of that Act) and Form 4 (being the form prescribed for such an Order made as respects a relevant highway which crosses land occupied for the purposes of a school in the circumstances specified in section 119B(1)(b) in Schedule 1 to the Highways, Crime Prevention etc. (Special Extinguishment and Special Diversion Orders) Regulations 2003 are amended as follows—

(a) insert, as the final paragraph of the preamble to the Order—

“This Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the [title] definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the diversion (as authorised by this Order) of a highway shown or required to be shown in the map and statement.”;

(b) insert, at the end of both paragraph 1 and paragraph 3 of the Order, the words “, and thereupon the [title] definitive map and statement shall be modified accordingly”.

Order made under section 294 of the Housing Act 1985

8. In relation to an Order made under section 294 of the Housing Act 1985, being a section 53A Order, Form 1 in the Schedule to the Housing (Prescribed Forms) Regulations 1990**(19)** (being the form prescribed for such an Order) is amended by inserting after paragraph 3 of the Order—

“**3A.** In consequence of paragraph 3, the Council under section 53A(2) of the Wildlife and Countryside Act 1981 hereby order that, upon the occurrence of the extinguishment effected by that paragraph, the [title] definitive map and statement shall be modified accordingly.”.

(17) See the Highways Act 1980, section 119A(3).

(18) See the Highways Act 1980, section 119B(5).

(19) S.I. 1990/447, amended by S.I. 1997/2971.

Public path orders made under section 257 of the Town and Country Planning Act 1990

9. In relation to an Order made under section 257 of the Town and Country Planning Act 1990, being a section 53A Order, Form 1 in Schedule 1 to the Town and Country Planning (Public Path Orders) Regulations 1993⁽²⁰⁾ (being the form prescribed for such an Order) is amended as follows—

(a) insert, as a second paragraph of the preamble to the Order—

“This Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the [title] definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the [stopping up] [diversion] (as authorised by this Order) of a highway hitherto shown or required to be shown in the map and statement.”;

(b) insert, in paragraph 1 of the Order after the words “[stopped up] [diverted]”, the words “, and the [title] definitive map and statement shall be modified accordingly.”;

(c) insert, at the end of paragraph 3 of the Order, the words “, and upon the occurrence of that [stopping up] [diversion] the [title] definitive map and statement shall be modified accordingly”.

Public path orders made under section 258(1) of the Town and Country Planning Act 1990

10. In relation to an Order made under section 258(1) of the Town and Country Planning Act 1990, being a section 53A Order, Form 2 in Schedule 1 to the Town and Country Planning (Public Path Orders) Regulations 1993 (being the form prescribed for such an Order) is amended as follows—

(a) insert, as a second paragraph of the preamble to the Order—

“This Order is also made under section 53A(2) of the Wildlife and Countryside Act 1981 (“the 1981 Act”) because it appears to the authority that the [title] definitive map and statement require modification in consequence of the occurrence of an event specified in section 53(3)(a)(i) of the 1981 Act, namely, the stopping up (as authorised by this Order) of a highway hitherto shown or required to be shown in the map and statement.”;

(b) insert, at the end of the substantive paragraph of the Order, the words “, and upon the occurrence of that extinguishment the [title] definitive map and statement is to be modified accordingly”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply section 53A of the Wildlife and Countryside Act 1981 (c. 69) to the types of Order listed in regulation 3. Those Orders are made by local authorities for the purpose of creating, stopping up or diverting public rights of way, and by virtue of section 53A's now applying to them may also provide for the required consequential modification of the definitive maps and statements

⁽²⁰⁾ S.I. 1993/10, amended by S.I. 1995/451, 1997/2971, 2006/1177.

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which record such rights of way. Before the coming into force of these Regulations, the required modifications to the definitive maps and statements could only be effected by means of a separate modification Order.

These Regulations also—

- (a) specify the relevant date for an Order to which section 53A applies, being the date on which the creation, stopping up or diversion of the right of way is to take effect (*regulation 4*);
- (b) for those Orders listed in regulation 3 for which model forms are prescribed, prescribe further wording for those forms dealing with the modification to the definitive map and statement (*regulation 5 and the Schedule*);
- (c) specify a scale of not less than 1:2,500 for any map contained in such an Order (*regulation 6*).

An impact assessment has been prepared in respect of these Regulations. A copy may be obtained from Defra (Sponsorship, Landscape and Recreation Division), Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

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